

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1131
76-1160

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

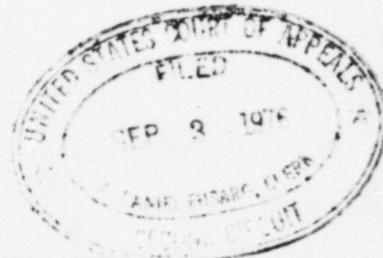
-against-

JAMES SEELEY CYPHERS and
JAMES W. FERRO,

Defendants-Appellants.

Docket No. 76-1131

Docket No. 76-1160



JOINT APPENDIX TO APPELLANTS' BRIEFS

ON APPEAL FROM JUDGMENTS
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

THOMAS W. EVANS, ESQ.,
Attorney for Appellant
JAMES SEELEY CYPHERS
20 Broad Street
New York, New York 10005
(212) 422-6767

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
JAMES W. FERRO
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971
JONATHAN J. SILBERMANN,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET

73 CR 848

74 CF 327
8 TRAVIA, J.

Did devise a scheme to defraud (mdse & tickets on plane
lost or stolen credit cards)

DATE	PROCEEDINGS
-18-73	Before Weinstein J - Indictment filed.
19-73	Govts Notice of Readiness for Trial filed.
9/20/73	Before TRAVIA, J.- Case called- Deft Cyphers present without counsel- Deft waives reading of the indictment and the court enters a plea of not guilty on his own behalf- Case adjd to 10/5/73 for all purposes- Bail conditions contd
9/20/73	Petition for writ of Habeas Corpus ad Prosequendum filed
9/20/73	By TRAVIA, J.- Writ issued- ret. 10/4/73
10/5/73	Before TRAVIA, J.- Case called- Adjd to 10/12/73 for all purposes- Bail cont'd (J. CYPHERS)
10/12/73	Before TRAVIA, J.- Case called- Deft James Ferro present without counsel- Court appoints Mr. John Gutman of Legal Aid as counsel-Deft Ferro waives

73 CR 848

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	revoked-Bail fixed at \$5,000.00 Surety Bond. Case adjd to Oct. 26, 1973 for all purposes as to deft Ferro-		
	Deft James Cyphers and counsel M. Preminger present-Case adjd to 10/26/73		
10/12/73	Notice of Appearance filed.		
10-16-73	Writ ret'd and filed - Deft Ferro to remain at West St. until Nov. 15, 1973 (see entry on reverse of Writ)		
10/17/73	Notice of motion to dismiss the indictment filed- ret. 10/26/73- Memorandum of Law filed (JAMES FERRO)		
10-18-73	Magistrate's files 73 M 413 and 1551 inserted into CR file.		
10/26/73	Before TRAVIA, J.- Case called- Defts and counsels present-Case adjd to Nov. 16, 1973 for all purposes-Deft J. FERRO's motion to dismiss the indictment is argued-Motion is denied.		
10/26/73	By TRAVIA, J.- Order appointing counsel filed (for deft J. FERRO) (with financial affidavit)		
11-9-73	Petition for writ of Habeas Corpus ad Prosequendum filed (FERRO)		
11-9-73	By TRAVIA, J.- Writ issued, ret. 11-16-73. (FERRO)		
11-15-73	Writ ret'd and filed- Deft not produced (FERRO)		
11-16-73	Before TRAVIA J - Case called - deft CYPHERS & counsel Marvin Preminger present - deft FERRO not present - Bench Warrant Ordered. Case adjd to Dec. 21, 1973 for all purposes.		
11-16-73	Bench Warrant Issued (FERRO)		
11-19-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed (FERRO)		
11-19-73	By TRAVIA J - Writ Issued, ret. Dec. 21, 1973. (FERRO)		
11-27-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed (FERRO)		
11-27-73	By TRAVIA J - Writ Issued ret. Dec. 21, 1973 (FERRO)		
12-11-73	Writ ret'd and filed - Unexecuted - deft transferred to Mairfield, Ohio (FERRO)		
12/22/73	Writ ret'd and filed. Unexecuted. (FERRO)		
12/21/73	Before TRAVIA, J.- Case called- Adj'd to 1/18/74 on consent		
1-18-74	Before TRAVIA J - Case called - defts CYPHERS & counsel Marvin Preminger present - deft FERRO not present - counsel John Gutman of Legal Aid present - case adj'd to Feb. 1, 1974 to set trial date.		
1-25-74	Petition for Writ of Habeas Corpus Ad Prosequendum filed. (FERRO)		
1-25-74	By TRAVIA J - Writ Issued, ret. 2-1-74 (FERRO).		
2-1-74	Before TRAVIA, J.- Case called- Adj'd to 2-5-74 at 4:00 P.M.		
2-5-74	Before TRAVIA J - case called - deft FERRO & counsel S. Gutman of		

CRIMINAL DOCKET

DATE	PROCEEDINGS
2-11-74	Notice of Motion filed for dismissal of the Indictment, ret. Feb. 15, 1974.
2-15-74	Before TRAVIA J - case called - adjd to Mar. 22, 1974 on consent.
2-19-74	Notice of motion to dismiss the indictment filed ret. 2-22-74 (FERRO)
2-22-74	Before TRAVIA J - case called & adjd to March 22, 1974 (for dismissal as to deft FERRO)
3-22-74	Before TRAVIA J - case called - motion for dismissing the Indictment adjd to 4-5-74 (FERRO & CYPHERS)
4-5-74	Before TRAVIA J - case called motion by AUSA Cunningham Indictment is dismissed - Motion granted - Indictment dismissed. Defs not to be released pending re-indictment (Rule 12(b)(5) F.R.C.P.) (CYPHERS) On motion of AUSA Cunningham the Indictment is dismissed as to deft FERRO.
4-5-74	By TRAVIA J - Order of dismissal filed as to both defts.
8/4/74	<i>Warrant filed - (Ferro) Executed</i>
10-10-74	Bench Warrant retd and filed (Ferro)
3/21/75	Before PLATT, J. - Case called - Bench warrant ordered for deft Cyphers
4/4/75	Before PLATT, J. - Case called - adjd to 4/25/75
5/13/76	Record on appeal certified and mailed to Joan Gill for delivery to court of appeals

A TRUE COPY
 ATTEST
 DATE 5/13/76 19 76
 BY LEWIS ORGEL CLERK
 DEPUTY CLERK

C. C. P. CRIMINAL DOCKET

~~TRAVERA~~
PLATT, J.

TITLE OF CASE

THE UNITED STATES

For U. S.: AUSA CUNNINGHAM

1'S.

JAMES SEELEY CYPERS and JAMES
W. FERRO

Cyphers
For Defendant: Marvin Preminger
66 Court St. - B'klyn N.Y.
834-8888

Did devise a scheme to defraud by means of false pretenses		
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[illegible]

DATE	PROCEEDINGS
4-23-74	Before DOOLING J --Indictment filed
4-26-74	Notice of appearance filed
5-3-74	Before TRAVIA, J.- Case called- Defts and counsels present- Both defts waiver reading of indictment and each enters a plea of not guilty- 20 days for motions is granted- Bail contd- Deft Ferro to be held at West Street
5-13-74	Govts Notice of Readiness for trial filed (both defts)
5-14-74	Notice of Motion filed for dismissal of the Indictment (FERRO) ret May 24, 1974.
5-22-74	Notice of Motion filed For Bill of Particulars, Discovery, etc. ret May 24, 1974 (CYPHERS)
5/24/74	Before TRAVIA, J.- Case called- Adj'd to 6/7/74 on consent (both defts)
6-6-74	Govts Memorandum of Law and affidavit of Robert T. McDowall filed

DATE	PROCEEDINGS
-6-74	Govts Memorandum of Law filed.
7/74	Before TRAVIA, J. - Case called- Motion for Bill of Particulars -Motion granted Defts motion to dismiss indictment-Decision reserved J. CYPHERS)- Deft's motion to dismiss indictment-Motion denied. (J. FERRO)
11-74	By TRAVIA J - Decision and Order filed denying motion of defts for dismissal of the indictment. Copy mailed to deft attys.
1-15-74	Before PLATT, J - case called - adjd to Nov. 22, 1974 for Motions.
1-20-74	Notice of Motion filed, ret. Nov. 22, 1974, for dismissal etc. (FERRO)
2/22/74	Before PLATT, J. - Case called- Counsel John Gutman of Legal Aid present- Motions made- decision reserved
-18-74	Affidavit of MYLES CUNNINGHAM filed. (received from Chambers)
-18-74	By PLATT, J - Decision and Order filed on motion by defts ^{FERRO} for dismissal of the Indictment governing prompt disposition of criminal cases etc. Motion denied.
2-21-75	Before Platt, J - case called - adjd to 2-28-75
2/28/75	Before PLATT, J. - Case called- Adjd to 3/14/75
3/1/75	Before PLATT, J. - Case called- Bench warrant ordered for deft Seeley ^{James} Cyphers
3/24/75	Before PLATT, J. - Case called- Deft's motion for court to disqualify itself motion denied- Motion to vacate bench warrant granted- no opposition- Case adjd to 4/4/75 to set date for trial- bail contd (CYPHERS)
6-2-75	Before WATSON, J - case called - trial set down for July 28, 1975 at 9:30 am.
7/28/75	Before WATSON, J. - Case called- Defts not present-counsel for deft Ferro present-Motion to sever as to deft Ferro denied-bench warrant ordered as to deft Cyphers-case adjd to 8/18/75 at 10:00 A.M. for trial
8-18-75	Before WATSON J - case called - defts & attys present - deft Cyphers waives reading of the indictment and on his own behalf enters a plea of not guilty after being advised of his rights by the court - adjd without date - cas referred to to Platt, J.
11-14-75	Before PLATT, J - case called - defts & attys present - adjd to 12-1-75 for trial at 9:30 am.
2/30/75	Before PLATT, J. - Case called- bench warrant ordered for deft Cyphers-execu- tion stayed to 1/5/76 at 10:00 A.M.-bench warrant issued
1/5/76	Before PLATT, J. - Case called- defts and counsel present-motion to suppress argued-motion denied-hearing held and concluded- trial ordered and begun jurors selected and sworn-trial contd to 1/6/76
1-6-76	Before Platt, J - case called trial resumed - trial contd to 1-7-76

CRIMINAL DOCKET

PROCEEDINGS

DATE	PROCEEDINGS
1-7-76	Before PLATT, J - case called - trial resumed - trial contd to Jan. 12, 1976.
1-8-76	Before PLATT, J - case called - deft Ferro & counsel present - deft Cyphers present with ^{without} counsel - deft Cyphers motion to appear as co-counsel and on his own behalf - motion granted as indicated.
1-12-76	Before PLATT, J - case called - trial resumed - deft Ferro motion for Judgment of Acquittal denied - Deft Cyphers motion to dismiss - denied - Trial contd to Jan. 13, 1976.
1-13-76	Before PLATT, J - case called - defts present with counsels - trial resumed - defts renew all motions = denied - Order of sustenance signed - Jury returns with a verdict of guilty on counts 1 and 2 as to both defts - Jury polled - Jury discharged - Trial concluded - sentences adjd without date.
1-13-76	Three stenographers transcripts filed (pgs 78 to 423) placed in the ^{74CR-322}
1-13-76	By Platt, J - Order of sustenance filed (Lunch)
1/21/76	Voucher for expert services filed
2-11-76	Two transcript filed (one dated Jan. 8 and one dated Jan. 13, 1976)
3-5-76	Before PLATT, J - case called - deft & attys present - deft CYPHERS sentenced on count 1 for a term of 5 years pursuant to 18:4208(a)(2) and shall become eligible for parole at such time as the Board of Parole may determine; Deft sentenced on count 2 to imprisonment for 5 years - execution of sentence is suspended and deft is placed on probation for 5 years, such sentence to run consecutively to the sentences imposed on counts 1 in 74 CR 322 and 75 CR 259, and shall pay a fine in the sum of \$1,000 for a total of \$3,000 in fines on all 3 counts. Bail contd pending appeal. Clerk to file Notice of Appeal on behalf of the deft.
	Deft FERRO sentenced to imprisonment on count 1 for a period of 4 years under 18:4208(a)(2) and shall become eligible for parole at such time as the Board of Parole may determine; deft sentenced on count 2 to imprisonment for 5 years - execution of said sentence is suspended and deft is placed on probation for 5 years, such sentence to run consecutively to the sentences in 74 CR-322 and 75 CR 259 and deft to pay a fine of \$1,000 to the U.S., for a total fine of \$3,000 in all 3 counts. Bail contd pending appeal. Clerk to file Notice of Appeal on behalf of the deft.
3-5-76	Judgment and Commitments filed for both defts - certified copies to

ATTORNEYS

For N. S.: Cunningham

vs.

JAMES W. FERRO

For Defendant: JOHN GUTMAN

Did devise a scheme to defraud (stolen credit cards)

DATE	PROCEEDINGS
-1-75	Before Platt, J -Indictment filed
/9/75	Notice of motion to dismiss indictment filed ret. 4/18/75 at 10:00 A.M.
4-17-75	Affidavit of Myles Cunningham filed in opposition to defts motion to dismiss the indictment (FERRO) forwarded to Chambers.
4-18-75	Before PLATT, J - case called - ,on motion for dismissal (Ferro) adjd to 4-25-75 as to deft Cyphers - Motion as to deft Ferro argued - denied as indicated - ready & passed - deft Ferro & counsel John Gutman present.
/25/75	Before PLATT,J.- Case called- Adjd to 6/13/75 at 10:00 A.M. on motion to dismiss (FERRO)
-9-75	Before PLATT J -case called - adjd to May 21, 1975(to set a date for trial)

75CR 259

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
6-2-75	Before WATSON, J - case called - trial set down for July 28, 1975 at 9:30 am.		
6-6-75	Govts Notice of Readiness for Trial filed		
7/28/75	Before WATSON, J.- Case called- Defts not present-counsel for deft Ferro present-Motion to sever as to deft Ferro denied- bench warrant ordered as deft Cyphers-Case adjd to 8/18/75 at 10:00 A.M. for trial		
8-18-75	Before WATSON J - case called - defts & attys present - deft CYPHERS waives reading of the indictment and after being advised of his rights and on his own behalf enters a plea of not guilty - adjd without date - case referred to PLATT, J.		
1/5/76	Before PLATT, J.- Case called- defts and counsel present- motion to suppress argued and denied- hearing held and concluded- trial ordered and begun- jurors selected and sworn-trial contd to 1/6/76		
1-6-76	Before PLATT, J - case called - trial resumed - Trial contd to Jan. 7, 1976.		
1-12-76	Before PLATT, J -case called - trial resumed - Deft Ferro's motion for Judgment of Acquittal is denied; deft Cyphers motion to dismiss is denied - trial contd to 1-13-76.		
1-13-76	Before PLATT, J - case called -- defts & attys present - trial contd - defts renew all motions - denied -Jury retires to deliberate and returns with a verdict as to each deft of guilty to count one - sentences adjd without date - jury polled and jury discharged - trial concluded.		
3-5-76	Before PLATT, J - case called - defts present with counsels - M.Seltzer for deft Ferro and Marvin Preminger for deft Cyphers. Deft FERRO sentenced to imprisonment for 4 years pursuant to 18:4208 (a)(2) and shall become eligible for parole at such time as the Board of Parole may determine; such sentence to run concurrently with the sentence imposed under count one in 74 CR-322; deft shall pay a fine of \$1,000; Deft CYPHERS sentenced on count 1 to a term of imprisonment fo 5 years under 18:4208(a)(2) and shall become eligible for parole at such time as the Board of Parole may determine; such sentence of imprisonment to run concurrently with the sentence imposed under count/one of 74 CR -322 and deft shall pay a fine of \$1,000.		
3-5-76	Judgment & Commitments filed for both defts - certified copies to Marshal.		
3-5-76	Notice of Appeal filed for both defts. (7.1.76)		

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ATTY-51
5/13 76
BY *[Signature]*
DEPUTY CLERK

EJB:EAM:SP
F. 731466

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JAMES SEELEY CYPHERS and
JAMES W. FERRO,

Defendants.

THE GRAND JURY CHARGES:

COUNTS ONE THROUGH NINETEEN

1. On or about and between the 1st day of May 1972 and the 20th day of March 1973, both dates being approximate and inclusive, within the Eastern District of New York, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, did unlawfully, wilfully and knowingly, devise and intend to devise a scheme and artifice to defraud various companies which issue credit cards including, but not limited to The Diners Club, Inc., Carte Blanche Corporation, American Express Company and Eastern Airlines and to obtain airline tickets and merchandise and other goods of value by means of false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be and were false and fraudulent when made, which scheme and artifice is set forth below.

2. It was part of said scheme and artifice to defraud that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would by means of false and fraudulent pretenses, representations and promises obtain airline tickets and merchandise and other goods of value by purchasing them with lost or stolen credit cards which had come into their possession, without intent to make payment and with knowledge to foresee that the credit card firms would be billed for such purchases by the sellers, and that the true original card holders would be billed by the credit card firms through the United States mails.

FILED
IN CLERK'S OFFICE

S. DISTRICT COURT E.D. NY

SEP 18 1973

INDICTMENT

Cr. No. _____

TIME A.M. _____

P.M. _____

T.18 U.S.C.

\$1341, \$1342 and \$2

73 CR 848

3. It was a further part of said scheme and artifice to defraud that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would use lost or stolen credit cards which had come into their possession to purchase airline tickets and merchandise and other goods of value, representing themselves to be the persons to whom the credit cards were issued, and forging the true account holders names to purchase invoices, without intent to make payment.

4. It was a further part of said scheme and artifice to defraud that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would alter and cause to be altered lost or stolen credit cards which came into their possession in one or more of the following ways: a) alteration of the identification number on the credit card; b) alteration of the name to whom the credit card was issued; c) alteration of the expiration date on the credit card.

5. It was a further part of said scheme and artifice to defraud that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would use lost or stolen credit cards which came into their possession altered in the manner described in this indictment, to purchase airline tickets and merchandise and other goods, representing themselves in some instances to be true account card holders, and forging the true account holders names to purchase invoices, without intent to make payment.

6. It was a further part of said scheme and artifice to defraud that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would, in instances where they had altered or caused to be altered the names appearing on lost or stolen credit cards which came into their possession, purchase airline tickets and merchandise and other goods, representing themselves to be fictitious persons and signing the names of such fictitious persons to purchase invoices, without intent to make payment.

7. It was a further part of said scheme and artifice to defraud that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would convert to their own use or sell to other persons airline tickets bought with the lost or stolen credit cards.

8. On or about the dates hereinafter set forth, within the Eastern District of New York, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, unlawfully, wilfully and knowingly, did cause to be placed in post offices and authorized depositories for mail matter, various letters to be sent and delivered by the Post Office Department as hereinafter set forth in Counts One through Nineteen.

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
1	August 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
2	August 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
3	September 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
4	September 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
5	September 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
6	June 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
7	June 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
8	June 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
9	June 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013
10	December 1972	Carte Blanche 3460 Wilshire Boulevard Los Angeles, Calif. 90013

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
11	August 1972	Carte Blanche 360 Wilshire Boulevard Los Angeles, Calif. 90013
12	February 23, 1973	American Express 770 Broadway New York, New York 10003
13	February 12, 1973	American Express 770 Broadway New York, New York 10003
14	October 1972	National Com. Bank 60 State Street Albany, N.Y. 12201
15	August 1972	Western State Bank Box 3281 Rincon Annex San Francisco, Calif.
16	October 20, 1972	Lewis State Bank Box 1535 So. Monroe Tallahassee, Fla. 32302
17	June 1972	Conn. Bank & Trust 1 Conn. Plaza Hartford, Conn. 06115
18	May 1972	Master Charge Dept. Hartford Nat'l Bank & Trust Hartford, Conn. 06120
19	February 1972	Conn. Bank & Trust 1 Conn. Plaza Hartford, Conn. 06115

(Title 18, United States Code, §1341 and §2).

COUNTS TWENTY THROUGH TWENTY-TWO

1. The Grand Jury repeats and realleges as constituting the scheme and artifice to defraud all of the allegations contained in paragraphs one through seven of Count One through Nineteen of this indictment.

2. On or about the dates hereinafter set forth, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, unlawfully, wilfully and knowingly, did cause to be delivered by mail according to the direction thereon, within the Eastern District of New York, various letters to be sent and delivered by the Post Office Department as hereinafter set forth in Counts Twenty through Twenty-Two.

<u>COUNT</u>	<u>DATE</u>	<u>ADDRESSEE</u>
20	February 1973	Dr. I. Arthur Simon 86 Plymouth Road Rockville Center, N.Y. 11570
21	March 6, 1973	Ronald Lesser 260 North Broadway Hicksville, N.Y. 11801
22	April 6, 1973	Ronald Lesser 260 North Broadway Hicksville, N.Y. 11801

(Title 18, United States Code, §1341 and §2).

COUNTS TWENTY-THREE THROUGH FORTY-THREE

1. The Grand Jury repeats and realleges as constituting the scheme and artifice to defraud all of the allegations contained in paragraphs one through seven of Counts One through Nineteen of this indictment.

2. On or about and between the 1st day of May 1972 and the 20th day of March 1973, both dates being approximate and inclusive, within the Eastern District of New York, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, wilfully and knowingly used fictitious, false and assumed names and names other than their own proper names, for the purpose of conducting, promoting and carrying on by means of the Postal Service, a scheme and artifice to defraud in violation of Title 18, United States Code, §1341, as hereinafter set forth:

<u>COUNT</u>	<u>APPROXIMATE DATE OF MAILING</u>	<u>ADDRESSEE</u>	<u>NAMES USED</u>
23	August 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	Harry J. Strathos
24	August 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	Harry J. Strathos
25	September 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	Myron H. Jellson
26	September 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	Myron H. Jellson
27	September 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	Myron H. Jellson

<u>COUNT</u>	<u>APPROXIMATE DATE OF MAILING</u>	<u>ADDRESSEE</u>	<u>NAMES USED</u>
28	June 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	John J. Maloney
29	June 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	John J. Maloney
30	June 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	John J. Maloney
31	June 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	John J. Maloney
32	December 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	William T. Galyean, Jr.
33	August 1972	Carte Blanche 3460 Wilshire Blvd. Los Angeles, Calif. 90013	Robert Friedman
34	March 6, 1973	Ronald Lesser 260 North Broadway Hicksville, N.Y. 11801	Ronald Lesser
35	April 6, 1973	Ronald Lesser 260 North Broadway Hicksville, N.Y. 11801	Ronald Lesser
36	February 23, 1973	American Express 770 Broadway New York, N.Y. 10003	Ronald Lesser
37	February 12, 1973	American Express 770 Broadway New York, N.Y. 10003	Ronald Lesser
38	October 1972	Nat'l. Com. Bank 60 State Street Albany, N.Y. 12201	Jeffrey T. Armstrong
39	August 1972	Western State Bank Box 3281, Rincon Annex San Francisco, Calif.	John Allen Mark
40	October 20, 1972	Lewis State Bank Box 1535, So. Monroe Tallahassee, Fla. 32302	Fred Preston Staff
41	June 1972	Conn. Bank & Trust 1 Conn. Plaza Hartford, Conn. 06115	Richard L. Blaisdell

<u>COUNT</u>	<u>APPROXIMATE DATE OF MAILING</u>	<u>ADDRESSEE</u>	<u>NAMES USED</u>
42	May 1972	Master Charge Dept. Hartford Nat'l. Bank & Trust Hartford, Conn. 06120	Arnold L. Olsson
43	February 1972	Conn. Bank & Trust 1 Conn. Plaza Hartford, Conn. 06115	John Wentworth

(Title 18, United States Code, §1342 and &2).

A TRUE BILL.

Thomas Connors
FOREMAN.

Robert H. Jones, Jr.
UNITED STATES ATTORNEY

FILED
IN CLERK'S OFFICE
DISTRICT COURT ED

APR 23 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

----- X
UNITED STATES OF AMERICA

SUPERCEDING INDICTMENT

- against -

Cr. No.
T. 18 U.S.C., §1341 & §2)

JAMES SEELEY CYPHERS and JAMES
W. FERRO,

Defendants.
----- X

74CR 322

THE GRAND JURY CHARGES:

COUNT ONE

1. On or about and between the 1st day of January 1973, and the 20th day of March 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, wilfully, knowingly and unlawfully did devise and intend to devise a scheme and artifice to defraud and obtain money and property by means of false and fraudulent pretenses from various airline companies.

2. It was part of a plan and a scheme that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would use or cause to be used, lost or stolen credit cards which had come into their possession to purchase airline tickets and other goods of value, without intent to make payment.

3. It was a further part of a plan and a scheme that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would alter, or cause to be altered, lost or stolen credit cards which came into their possession in one or more of the following ways: (a) Alteration of the Identification Number of the credit card; (b) Alteration of the name to whom the credit card was issued; (c) Alteration of the expiration date of the credit card.

4. It was a further part of a plan and a scheme that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would convert to their use, or sell to other persons,

(1)

airline tickets bought with the lost and stolen credit cards.

5. On or about the 3rd day of February 1973, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to:

Dr. I. Simon
86 Plymouth Road
Rockville Center, N.Y.

which letter contained airline tickets fraudulently obtained.
(Title 18, United States Code, §1341 and §2).

COUNT TWO

1. The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

2. On or about the 19th day of February 1973, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to:

Dr. Stuart Silvan
19 Robin Way
Great Neck, N. Y.

which letter contained airline tickets fraudulently obtained.
(Title 18, United States Code, §1341 and §2).

A TRUE BILL.

Frederick L. Kuttner

FOREMAN

Edward M. Boyd
UNITED STATES ATTORNEY

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY

APR 1 1975

TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA

- against -

JAMES SEELEY CYPHERS and JAMES
W. FERRO,

Defendants.
----- X

Cr. No. _____
(T. 18 U.S.C., §1341 & §2)

75CR 259

THE GRAND JURY CHARGES:

COUNT ONE

1. On or about and between the 1st day of January 1973, and the 20th day of March 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, wilfully, knowingly and unlawfully did devise and intend to devise a scheme and artifice to defraud and obtain money and property by means of false and fraudulent pretenses from various airline companies.

2. It was part of a plan and a scheme that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would use or cause to be used, lost or stolen credit cards which had come into their possession to purchase airline tickets and other goods of value, without intent to make payment.

3. It was a further part of a plan and a scheme that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would alter, or cause to be altered, lost or stolen credit cards which came into their possession in one or more of the following ways:

(a) Alteration of the Identification Number of the
credit card;

(b) Alteration of the name to whom the credit card was
issued;

(A)

- 2 -

(c) Alteration of the expiration date of the credit card.

4. It was a further part of a plan and a scheme that the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO would convert to their use, or sell to other persons, airline tickets bought with the lost and stolen credit cards.

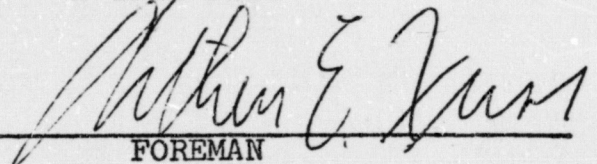
5. On or about the 26 day of February 1973, the defendant JAMES SEELEY CYPHERS and the defendant JAMES W. FERRO, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to:

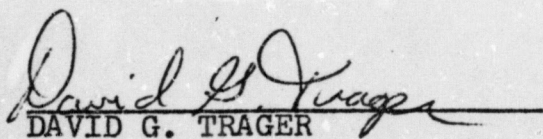
Dr. I. Simon
86 Plymouth Road
Rockville Center, N.Y.

which letter contained airline tickets fraudently obtained.

(Title 18, United States Code, §1341 and §2).

A TRUE BILL


FOREMAN


DAVID G. TRAGER
United States Attorney
Eastern District of New York

CHARGE OF JUDGE PLATT

1
2 THE COURT: It is my practice, ladies and
3 gentlemen, to read the instructions of the Court
4 to you on the law. I realize it is more difficult
5 for you to follow, but on the other hand it minimizes
6 the risk for error. So pay attention and I will
7 try to be as brief as possible.

8 Members of the jury: Now that you have
9 heard the evidence and the argument, it becomes
10 my duty to give the instructions of the Court as
11 to the law applicable to this case.

12 It is your duty as jurors to follow the law
13 as stated in the instructions of the Court, and to
14 apply the rules of law so given to the facts as you
15 find them from the evidence in the case.

16 You are not to single out one instruction
17 alone as stating the law, but must consider the
18 instructions as a whole.

19 Neither are you to be concerned with the
20 wisdom of any rule of law stated by the Court.
21 Regardless of any opinion you may have as to what
22 the law ought to be, it would be a violation of
23 your sworn duty to base a verdict upon any other view
24 of the law than that given in the instruction of
25 the Court; just as it would be a violation of your

sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other considerations not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of each such individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "Not-Guilty" pleas of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law the law as stated by the Court and reach a just verdict, regardless of the consequences.

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2 Now, I am not sending the exhibits which
3 have been received in evidence with you as you
4 retire for your deliberations. However, you are
5 entitled to see any or all of these exhibits as
6 you consider your verdict. I suggest that you
7 begin your deliberations and then, if it would be
8 helpful to you, you may ask for any or all of the
9 exhibits simply by sending a note to me through
10 one of the deputy marshals who will be stationed
11 outside your jury room door.

12 An indictment is but a form or method of
13 accusing a defendant of a crime. It is not evidence
14 of any kind against the accused.

15 There are two types of evidence from which
16 a jury may properly find a defendant guilty of a
17 crime. One is direct evidence -- such as the
18 testimony of an eyewitness. The other is circum-
19 stantial evidence -- the proof of facts and cir-
20 cumstances which rationally imply the existence or
21 non-existence of other facts because such other facts
22 usually follow according to the common experience
23 of mankind. For example, the footprint of a man
24 in the sand implied to Robinson Crusoe that there
25 was another man with him on the desert island, and

1 indeed there was, the man Friday. Thus on the one
2 nand you may have direct evidence of the issue and
3 on the other hand you may have circumstantial evi-
4 dence of the issue. The law does not hold that
5 one type of evidence is necessarily of better
6 quality than the other. The law requires only that
7 the government prove its case beyond a reasonable
8 doubt both on the direct and circumstantial evidence.
9 At times the jury might feel that circumstantial
10 evidence is of better quality. That judgment is
11 left entirely up to you.
12

13 As a general rule, the law makes no distinc-
14 tion between direct and circumstantial evidence,
15 but simply requires that, before convicting a defend-
16 ant, the jury be satisfied of the defendant's guilt
17 beyond a reasonable doubt from all the evidence
18 in the case.

19 The law presumes the defendants to be
20 innocent of crime. Thus a defendant, although
21 accused, begins the trial with a "clean slate" --
22 with no evidence against him. And the law permits
23 nothing but legal evidence presented before the
24 jury to be considered in support of any charge against
25 the accused. So the presumption of innocence alone

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2 is sufficient to acquit a defendant, unless the
3 jurors are satisfied beyond a reasonable doubt
4 of the defendant's guilt after careful and impartial
5 consideration of all the evidence in the case.

6 The burden is always upon the prosecution
7 to prove guilt beyond a reasonable doubt. This
8 burden never shifts to a defendant; for the law
9 never imposes upon a defendant in a criminal case
10 the burden or duty of calling any witnesses or
11 producing any evidence.

12 A reasonable doubt does not mean a doubt
13 arbitrarily and capriciously asserted by a juror
14 because of his or her reluctance to perform an un-
15 pleasant task. It does not mean a doubt arising
16 from the natural sympathy which we all have for
17 others. It is not necessary for the government to
18 prove the guilt of the defendant beyond all possible
19 doubt. Because if that were the rule, very few
20 people would ever be convicted. It is practically
21 impossible for a person to be absolutely sure and
22 convinced of any controverted fact which, by its
23 nature, is not susceptible of mathematical certainty.
24 In consequence, the law says that a doubt should be
25 reasonable doubt not a possible doubt.

1
2 A reasonable doubt is a doubt based upon
3 reason and common sense, the kind of doubt that would
4 make a reasonable person to hesitate to act. Proof
5 beyond a reasonable doubt must therefore be proof
6 of such a convincing character that you would be
7 willing to rely and act upon it unhesitatingly in
8 the most important of your own affairs.

9 The jury will remember that a defendant is
10 never to be convicted on mere suspicion or conjecture.

11 Again, a reasonable doubt means a doubt that
12 based on reason and must be substantial rather
13 than speculative. It must be sufficient to cause
14 a prudent person to hesitate to act in the most
15 important affairs of his or her life.

16 The requirement of proof beyond a reasonable
17 doubt operates on the whole case and not on the
18 separate bits of evidence. Each individual item
19 of evidence need not be proven beyond a reasonable
20 doubt.

21 It is charged in Count One of the first
22 indictment that:

23 "On or about and between the First day of
24 January 1973, and the Twentieth day of March 1973,
25 both dates being approximate and inclusive, within

1 the Eastern District of New York and elsewhere,
2 the defendant James Seeley Cyphers and the defend-
3 ant James W. Ferro, willfully, knowingly and un-
4 lawfully did devise and intend to devise a scheme
5 and artifice to defraud and obtain money and property
6 by means of false and fraudulent pretenses from
7 various airline companies.
8

9 "It was part of a plan and a scheme that the
10 defendant James Seeley Cyphers and the defendant
11 James W. Ferro would use or cause to be used, lost
12 or stolen credit cards which had come into their
13 possession to purchase airline tickets and other
14 goods of value, without intent to make payment.

15 "It was a further part of a plan and a scheme
16 that the defendant James Seeley Cyphers and the
17 defendant James W. Ferro would alter, or cause to
18 be altered, lost or stolen credit cards which came
19 into their possession in one or more of the follow-
20 ing ways:

21 "(a) Alteration of the identification number
22 of the credit card;

23 "(b) Alteration of the name to whom the
24 credit card was issued;

25 "(c) Alteration of the expiration date

1
2 of the credit card.

3 "Paragraph 4: It was a further part of
4 a plan and a scheme that the defendant James Seeley
5 Cyphers and the defendant James W. Ferro would con-
6 vert to their use, or sell to other persons, airline
7 tickets bought with the lost and stolen credit cards.

8 "Paragraph 4: On or about the Third day
9 of February 1973, the defendant James Seeley Cyphers
10 and the defendant James W. Ferro, for the purpose
11 of executing the aforesaid scheme and artifice and
12 attempting to do so, caused to be placed in an
13 authorized depository for mail matter a letter
14 addressed to:

15 "Dr. I. Simon, 86 Plymouth Road, Rockville
16 Center, New York, which letter contained airline
17 tickets fraudulently obtained.

18 "All in violation of Title 18, United States
19 Code, Section 1341 and Section 2."

20 Now Count 2 of the same indictment is the
21 same except for paragraph 5, and paragraph 5 reads
22 as follows:

23 "On or about the Nineteenth day of February,
24 1973, the defendant James Seeley Cyphers and the
25 defendant James W. Ferro, for the purpose of

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2 executing the aforesaid scheme and artifice and
3 attempting to do so, caused to be placed in an
4 authorized depository for mail matter a letter
5 addressed to:

6 "Dr. Stuart Sylvan, 19 Robin Way, Great
7 Neck, New York, which letter contained airline
8 tickets fraudulently obtained."

9 All in violation of the same sections of
10 the Code.

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15 (Continued on next page.)
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Charge of the Court

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2 THE COURT: (Continuing.) Count One of the
3 second indictment is the same except for paragraph
4 5 which reads: "On or about the 26th day of
5 February, 1973, the defendant James Seely Cyphers
6 and the defendant James W. Ferro, for the purpose of
7 completing the aforesaid scheme and artifice and
8 attempting to do so, caused it to be placed in an
9 authorized depository for mail matter a letter
10 addressed to: Dr. I. Simon, 86 Plymouth Road,
11 Rockville Center, New York, which letter contained
12 airline tickets fraudulently obtained." That is
13 in violation of Title 18, United States Code
14 Section 1341 and Section 2.

15 Section 1341 of Title 18 of the United States
16 Code provides in pertinent part that: "Whoever,
17 having devised or intending to devise any scheme
18 or artifice to defraud, or for obtaining money or
19 property by means of false or fraudulent pretenses...
20 for the purpose of executing such scheme or artifice
21 or attempting to do so, places in any post office
22 or authorized depository for mail matter, any
23 matter or thing whatever to be sent or delivered
24 by the postal service... shall be guilty of an
25 offense against the laws of the United States."

1
2 The words "scheme" and "artifice" as used in
3 the statute just read include any plan or course of
4 action intended to deceive others and to obtain by
5 false or fraudulent pretenses money or property
6 from persons so deceived.

7 A statement or representation is "false or
8 fraudulent" within the meaning of this statute, if
9 known to be untrue, or made with reckless
10 indifference as to its truth or falsity, and made
11 or caused to be made with the intent to deceive.

12 A "false or fraudulent representation" may
13 be made by statements of half truths or the
14 concealment of material facts as well as by
15 affirmative statements or acts.

16 There was a second section cited in each of
17 the counts of the indictment, and that is Section 2
18 of Title 18 which is the so-called aiding and
19 abetting section. That section reads as follows:
20 "Whoever commits an offense against the United
21 States or aids, abets, counsels, commands, induces
22 or procures its commission, is punishable as a
23 principal. Whoever willfully causes an act to
24 be done which is directly performed by him or
25 another would be an offense against the United States

1
2 is punishable as a principal."

3 The essential elements which are required
4 to be proved beyond a reasonable doubt in order to
5 establish the offenses charged in the indictment
6 are as follows: One, an act or acts of having
7 devised a scheme or artifice to defraud or to
8 attempt to defraud; two, the act or acts of placing
9 or causing to be placed in an authorized depository
10 for mail a letter intended to be sent or delivered
11 by the postal service for the purpose of executing
12 the scheme.

13 The mail fraud statute, violation of which
14 is charged here, requires only that there be a
15 scheme to defraud and not actual fraud and
16 therefore I charge you that the government is not
17 required to prove that the airline actually
18 sustained any loss in order to establish the
19 existence of a scheme to defraud those airlines.

20 The government must prove, beyond a
21 reasonable doubt, that some actual harm or injury
22 was contemplated by the schemers. Proof that the
23 airlines were actually victimized, though not
24 necessary, may be considered as evidence of the
25 schemers' intent to defraud.

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2 If you find that airline tickets were
3 actually used for flights and that the airlines
4 were never paid for those tickets and you may find
5 that the airlines were actually victimized. But
6 it is not necessary that you find that the
7 airlines were actually victimized. You need only
8 find that the schemers intended to victimize the
9 airlines.

10 It is not necessary that the scheme
11 contemplate the use of the mails as an essential
12 element.

13 To prove a violation of the mail fraud
14 statute the government must prove, beyond a
15 reasonable doubt, that the mails were used for
16 the purpose of executing the scheme. But it is
17 not necessary that the government prove that the
18 use of the mails was an essential element of the
19 scheme.

20 You may find that the mails were used in
21 furtherance of the scheme charged by the government
22 if you find that the mails were used to enable the
23 schemers to realize the fruits of their scheme.

24 You may also find that the mails were used
25 for the purpose of executing the scheme if you find

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2 that the mails were used to enable the scheme to
3 continue and to reach fruition.

4 The letter mailed need not itself disclose
5 any intent to defraud, nor show on its face that it
6 was mailed in furtherance of a scheme to defraud.
7 But it is necessary that the evidence in the case
8 established beyond a reasonable doubt that the
9 letter was willfully mailed, or caused it to be
10 mailed, by one of the accused, with the intent to
11 help carry out some essential steps in the
12 execution of the scheme to defraud alleged in the
13 indictment.

14 The use of the United States mails in
15 furtherance of the scheme to defraud is an essential
16 element of the offense charged. It is not necessary
17 that the use of the mails by the participants
18 themselves be contemplated or that the defendants do
19 any actual mailing or specifically intend that the
20 mails be used. It is sufficient if the mails were
21 in fact used to carry out the scheme and that the
22 use of the mails by a participant or somebody else
23 was reasonably foreseeable.

24 While it is not necessary that the government
25 prove that the defendants actually used the mails

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2 themselves, it is necessary that the government prove,
3 beyond a reasonable doubt, that it was foreseeable
4 that the scheme in which the defendants participated
5 would involve use of the mails. The actual use of
6 the mails in furtherance of the scheme may be
7 considered as proof that the use of the mails was
8 foreseeable. In considering whether the mails were,
9 in fact, used in furtherance of the scheme you may
10 consider the testimony of persons who testified that
11 they received merchandise obtained as part of the
12 scheme, here airline tickets, in envelopes, with
13 stamps and postmarks and delivered by postmen, as
14 well as any other circumstantial evidence of the use
15 of the mails, if you find such to be the fact.

16 To act with intent to defraud means to act
17 knowingly and with the specific intent to deceive,
18 ordinarily for the purpose of either causing some
19 financial loss to another person or bringing about
20 some financial gain to oneself.

21 The gist of the offenses charged in the
22 indictments is the willful use of the mails in
23 carrying out or attempting to carry out a scheme to
24 defraud as charged and not the scheme itself. So the
25 success or failure of the scheme is immaterial and

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2 it is not necessary to show that any person was in
3 fact defrauded.

4 Under the mail fraud statute each separate
5 use of the mails in furtherance of the scheme to
6 defraud constitutes the separate offense.

7 Stated in another way, the indictment charged
8 the defendants with the crimes of mail fraud. Before
9 they may be found guilty of this crime the government
10 must prove beyond a reasonable doubt that they
11 participated in the scheme to defraud, with the
12 intent to defraud and that the mails were used in
13 the furtherance of that scheme.

14 Again, a scheme to defraud under the mail
15 statute means some plan to procure money or property
16 by means of false pretenses or representations
17 calculated to deceive persons ordinarily prudent.
18 The government must prove that the defendants
19 participated in such plan and that the scheme,
20 artifice, false and fraudulent pretenses, were made
21 by them or their agent, knowing they were false
22 and with the intent to defraud. It is not necessary,
23 however, that any person was actually defrauded by
24 the scheme. Nor is it necessary that the government
25 prove all the pretenses and acts charged in the

1
2 indictment. It is essential only that one or more
3 of them be proved to show the existence of the scheme.

4 Now, on the aiding and abetting aspect of
5 the case I read to you Section 2 of Title 18 which
6 I will read again: "Whoever commits an offense
7 against the United States, or aids, abets, counsels,
8 commands, induces, or procures its commission, is
9 punishable as a principal. Whoever willfully causes
10 an act to be done, which if directly performed by
11 him or another would be an offense against the
12 United States, is punishable as a principal."

13 The guilt of a defendant may be established
14 without proof that the accused personally did every
15 act constituting the offense charged.

16 In other words, every person who willfully
17 participates in the commission of a crime may be
18 found guilty of that offense. Participation is
19 willful if done voluntarily and intentionally, and
20 with the specific intent to do something the law
21 forbids, or with a specific intent to fail to do
22 something the law requires to be done; that is to
23 say, with bad purpose either to disobey or to
24 disregard the law.

25 In order to aid and abet another to commit a

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2 crime it is necessary that the accused willfully
3 associate himself in some way with the criminal
4 venture, and willfully participate in it as he
5 would in something he wishes to bring about; that
6 is to say, that he willfully seek by some act or
7 omission of his to make the criminal venture succeed.

8 An act or omission is willfully done if done
9 voluntarily and intentionally and with the specific
10 intent to do something the law forbids, or with the
11 specific intent to fail to do something the law
12 requires to be done; that is to say, with bad
13 purpose either to disobey or to disregard the law.

14 You of course may not find any defendant
15 guilty unless you find beyond a reasonable doubt
16 that every element of the offense as defined in
17 these instructions was committed by some person or
18 persons, and that the defendant participated in its
19 commission.

20 Mere presence at the scene of the crime and
21 knowledge that a crime is being committed are not
22 sufficient to establish that the defendant aided
23 and abetted the crime, unless you find beyond a
24 reasonable doubt that the defendant was a
25 participant and not merely a knowing spectator.

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2 An act is done knowingly if done voluntarily
3 and intentionally and not because of mistake or
4 accident or other innocent reason.

5 The purpose of adding the word "knowingly"
6 was to insure that no one would be convicted for
7 an act done because of mistake, or accident, or
8 other innocent reason.

9 As stated before, with respect to an offense
10 such as charged in this case, specific intent must
11 be proved beyond a reasonable doubt before there can
12 be a conviction.

13 An act is done willfully if done voluntarily
14 and intentionally and with the specific intent to do
15 something the law forbids, that is to say, with bad
16 purpose either to disobey or disregard the law.

17 Knowledge and intent ordinarily may not be
18 proved directly, because there is no way of
19 fathoming or scrutinizing the operation of a human
20 mind. But you may infer a defendant's knowledge
21 and intent from the surrounding circumstances. You
22 may consider any statement made and done or omitted
23 by a defendant, and all other facts and circumstances
24 in evidence which indicate his state of mind. It is
25 ordinarily reasonable to infer that a person intend

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2 the natural and probable consequences of acts
3 knowingly done or knowingly omitted.

4 Now, as you will recall, there was a
5 considerable amount of testimony and several
6 exhibits which were admitted into evidence subject
7 to a special instruction to be given by the Court
8 to you at this time. That instruction is as follows:

9 The fact that the accused may have committed
10 similar acts at some time is not any evidence or
11 proof whatever that at another time the accused
12 committed the offenses charged in the indictments
13 even though the acts and the offenses charged are of
14 a like nature. Evidence as to an alleged similar
15 act may not therefore be considered by the jury in
16 determining whether the accused did the acts charged
17 in the indictments. Nor may such evidence be
18 considered for any other purpose whatever
19 unless the jury first finds that other evidence in
20 the case standing alone establishes beyond a
21 reasonable doubt that the accused did the acts
22 charged in the indictments leaving aside only the
23 question of whether the accused did the same
24 knowingly, intentionally, willfully, or as part of
25 a plan or preparation for a plan and not by way of

mistake or accident.

If the jury should find beyond a reasonable doubt from the other evidence in the case that the accused did the acts charged in the indictments then the jury may consider evidence as to an alleged earlier or simultaneous similar act in determining whether there was a plan, scheme, or design, or a state of mind, knowledge of intent with which the accused did the acts charged in the indictments. And where all the elements of the alleged earlier or simultaneous similar act are established by evidence which is clear and conclusive, the jury may, but is not obliged to, draw the inference and find that in doing the acts charged in the indictments the accused acted pursuant to a plan, scheme, or design or acted willfully, knowingly and with specific intent and not because of mistake or accident or for innocent reason.

(Continued next page.)

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3 Statements and arguments of counsel are not evi-
4 dence in the case, unless made as an admission or
5 stipulation of fact. When the attorneys on both sides
6 stipulate or agree as to the existence of a fact, you
7 must, unless otherwise instructed, accept the stipu-
8 lation as evidence and regard that fact as proved.

9 The Court may take judicial notice of certain
10 facts or events. When the Court declares it will
11 take judicial notice of some fact or event, you may
12 accept the Court's declaration as evidence, and regard
13 as proved the fact or event which has been judicially
14 noticed, but you are not required to do so since you
15 are the sole judges of the facts.

16 Unless you are otherwise instructed, the evidence
17 in the case always consists of the sworn testimony
18 of the witnesses, regardless of who may have called
19 them; and all exhibits received in evidence, regard-
20 less of who may have produced them, and all facts
21 which may have been admitted or stipulated, and all
22 facts and events which may have been judicially
23 noticed, and all applicable presumptions stated in
24 these instructions.

25 Any evidence as to which an objection was sustained
by the Court, and any evidence ordered stricken by

the Court must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross-examination as well as what is testified to on direct examination.

Unless you are otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based on the evidence only. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact you may not consider the assertion as evidence of that fact. The lawyers'

statements are not evidence.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or

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2 hear it differently; an innocent misrecollection,
3 like failure of recollection, is not an uncommon
4 experience. In weighing the effect of a discrepancy,
5 always consider whether it pertains to a matter of
6 importance or an unimportant detail, and whether
7 the discrepancy results from innocent error or
8 intentional falsehood.

9 After making your own judgment, you will give
10 the testimony of each witness such credibility, if
11 any, as you may think it deserves.

12 The rules of evidence ordinarily do not
13 permit witnesses to testify as to opinions or con-
14 clusions. An exception to this rule exists as to
15 those whom we call expert witnesses. Witnesses who,
16 by education and experience, have some expertise in
17 some art, science, profession or calling, may state
18 their opinions as to relevant and material matters,
19 in which they profess to be expert, and may also
20 state their reasons for the opinion.

21 You should consider each expert opinion re-
22 ceived in evidence in this case and give it such
23 weight as you may think it deserves. If you should
24 decide that the opinion of an expert witness is not
25 based upon sufficient education and experience, or

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3 if you should conclude that the reasons given in
4 support of the opinion are not sound or if you feel
5 that it is outweighed by other evidence, you may
6 disregard the opinion entirely.

7 The testimony of a witness may be discredited
8 or impeached by showing that he previously made
9 statements which are inconsistent with his present
10 testimony. The earlier contradictory statements
11 are admissible only to impeach the credibility of
12 the witness and not to establish the truth of these
13 statements. It is the province of the jury to
14 determine the credibility, if any, to be given the
15 testimony of a witness who has been impeached.

16 If a witness is shown knowingly to have
17 testified falsely concerning any material matter,
18 you have a right to distrust such witness's testimony
19 in other particulars, and you may reject all the
20 testimony of that witness or give it such credibility
21 as you think it deserves.

22 The law does not compel a defendant in a
23 criminal case to take the witness stand and testify,
24 and no presumption of guilt may be raised and no
25 inference of any kind may be drawn from the failure
of a defendant to testify.

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2 As stated before in the instructions, the
3 law never imposes on a defendant in a criminal case
4 the burden or duty of calling any witnesses or pro-
5 ducing any evidence.

6 It is the duty of the attorney on each side
7 of a case to object when the other side offers
8 testimony or other evidence which the attorney
9 believes is not properly admissible. You should
10 not show prejudice against any attorney or his client
11 because the attorney has made objections.

12 Upon allowing testimony or other evidence
13 to be introduced over the objection of an attorney,
14 the Court does not, unless expressly stated, indicate
15 any opinion as to the weight or effect of such evi-
16 dence. As stated before, the jurors are the sole
17 judges of the credibility of all witnesses and the
18 weight and effect of all evidence.

19 When the Court has sustained an objection to
20 a question addressed to a witness the jury must dis-
21 regard the question entirely, and may not draw any
22 inference from the wording of it, or speculate as
23 to what the witness would have said if he had been
24 permitted to answer the question.

25 The fact that the Court has asked one or more

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2 questions of a witness for clarification or admissi-
3 bility of evidence is not to be taken by you in any
4 way as indicating that the Court has any opinion as
5 to the guilt or innocence of the defendant in this
6 case and you are to draw no such inference therefrom.
7 That determination is up to you and you alone based
8 on all the facts in the case and the applicable law
9 in these instructions.

10 Now, you are here to determine the guilt or
11 innocence of the accused from the evidence in the
12 case. You are not called upon to return a verdict
13 as to the guilt or innocence of any other person
14 or persons. So, if the evidence in the case con-
15 vinces you beyond a reasonable doubt of the guilt
16 of the accused, you should so find, even though
17 you may believe one or more other persons are guilty.
18 But if any reasonable doubt remains in your mind
19 after impartial consideration of all the evidence
20 in the case, it is your duty to find the accused
21 not guilty.

22 The verdict must represent the considered
23 judgment of each juror. In order to return a verdict,
24 it is necessary that each juror agree thereto. Your
25 verdict must be unanimous.

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3 It is your duty as jurors to consult with one
4 another and to deliberate with a view to reaching an
5 agreement, if you can do so without violence to
6 individual judgment. Each of you must decide the
7 case for himself, but do so only after an impartial
8 consideration of the evidence in the case with your
9 fellow jurors.

10 In the course of your deliberations, do not
11 hesitate to reexamine your own views, and change
12 your opinion if convinced it is erroneous. But do
13 not surrender your honest conviction as to the weight
14 or effect of evidence, solely because of the opinion
15 of your fellow jurors, or for the mere purpose of
16 returning a verdict.

17 Remember at all times you are not partisans.
18 You are judges, judges of the facts. Your sole inter-
19 est is to seek the truth from the evidence in the
20 case.

21 There is nothing peculiarly different in the
22 way a juror should consider the evidence in a
23 criminal case, from that in which all reasonable
24 persons treat any question depending upon evidence
25 presented to them. You are expected to use your good
sense; consider the evidence in the case for only

those purposes for which it has been admitted and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

You must reach a verdict with respect to each of the two defendants on each of the three counts in the two indictments. There are two in the first and one in the second. You must reach a separate verdict with respect to each of them on each of the the three counts.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection that should control during your deliberations.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon retiring to the jury room, Juror No. 1,

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2 the juror seated closest to me in the tan pants and
3 coat, will act as your foreman unless he chooses not
4 to do so. If he chooses not to do so, you will elect
5 a foreman or forelady from among your number. The
6 foreman will preside over your deliberations and
7 will be your spokesman here in court.

8 If it becomes necessary during your delibera-
9 tions to communicate with the Court, you may send a
10 note by the marshal, signed by your foreman or by
11 one or more members of the jury. No member of the
12 jury should ever attempt to communicate with the
13 Court by any means other than a signed writing and
14 the Court will never communicate with any member of
15 the jury on any subject touching the merits of the
16 case; otherwise than in writing or orally here in
17 open court.

18 (Continued on next page.)
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2 You will note from the oath which will be taken
3 shortly by the Deputy Marshals that they, too, as well
4 as all other persons, are forbidden to communicate in
5 any way or manner with any member of the jury on any
6 subject touching the merits of the case.

7 Bear this in mind: You are never to reveal to
8 any person -- not even to the Court -- how the jury
9 stands, numerically or otherwise, on the question of
10 the guilt or innocence of the accused, until after you
11 have reached a unanimous verdict. When, as and if you
12 reach a unanimous verdict, then you write me a note
13 to the effect: We have reached a unanimous verdict.
14 You don't tell me what the verdict is in the note,
15 you tell me that in open court when you are called
16 upon to say so, but not before. You will never, never
17 write me a note saying, we stand thus and so, for a
18 conviction or acquittal, or anything of that nature.
19 If you do write me a note such as the latter, then I
20 will be compelled to declare a mistrial, we will have
21 to retry the whole case all over, and I'm sure you don't
22 want to force us to do that. Bear that in mind when
23 you reach a unanimous verdict that you write me a
24 note that you have reached a unanimous verdict without
25 telling me what it is, and never write and say, we

stand thus and so.

I will take five minutes while I discuss matters with the attorneys. After that you will be sent to the jury room for the consideration of the case and the alternates will be discharged, but in the meantime during the five minutes recess, don't discuss the case.

(At 1:20 p.m. a five-minute recess was taken.)

MR. KRAMER: I have no additions or changes, your Honor.

MS. SELTZER: I would request a charge on the use of the mails.

You took every statement from every Second Circuit decision and added a little bit, maybe, and it came out worse for the defendant or required less proof, according to your charge, by the Government than any of the prior decisions.

It is very hard when you are speaking to get all the exact words, but I think that the tenor and the interpretation of the Finkelstein case just went further in this case than it did previously.

MR. PREMINGER: I will object to the charge where you said if it was foreseeable that the mails would be involved, and I know that Finkelstein says

1 that, and Finkelstein is a Second Circuit case, and I
2 could be wrong, too --

3
4 THE COURT: Why don't you take it up with them?

5 MR. PREMINGER: For the record, may I voice my
6 objection to that, there is always a question, your
7 Honor, as to what foreseeability is, and I would say
8 if your Honor --

9 THE COURT: I think I used "recent foreseeability."

10 MR. PREMINGER: All right. I would say, your
11 Honor, that the charge could include -- well, I would
12 ask that you charge the jury that in the event they
13 believe that the evidence supports the theory that
14 Nagin was an alternate user and if it stopped there
15 then there was not foreseeability that the mails would
16 be used.

17 MS. SELTZER: I will concur in that objection,
18 your Honor.

19 THE COURT: All right, we will get them back.

20 (At 1:20 p.m. the jury took its place in the
21 jury box.)

22 THE COURT: Now the alternate jurors, your time
23 has come.

24 Have any of you ordered lunch?

25 You can eat your lunch in my witness room, which

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2 is across the hall. When you go out this door you
3 go around towards the elevator, and that is what you
4 will see on the left-hand side, "Judge Platt's witness
5 room," and you can eat your lunch there.

6 If you didn't order lunch, you can of course
7 take your hats and coats and check out, you will have
8 satisfied your jury service for the day.

9 In any event, after you have consumed your
10 lunch, you should do the same, you should check out
11 with the jury clerk and make sure that you are checked
12 out and given any further instructions which may be
13 required.

14 You go with the thanks of the Court. In this
15 case you were not needed, there are some hardy souls
16 with ability to brave this heavy weather which we have
17 had in the last week. You have come in timely every
18 day, notwithstanding the weather, and thank you for
19 being so prompt and being so attentive to this case.

20 As I say, you go with the thanks of the Court.
21 Unfortunately, you cannot carry on further deliberations.
22 If you have some coats, you should pick them up and
23 go on from there.

24 Thank you very much.

25 (At this point the alternate jurors left the

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courtroom.

THE COURT: All right, swear the Marshals in.

(At this point, the Marshals were sworn.)

THE COURT: All right, now, ladies and gentlemen, I'm going to let the attorneys go to lunch. Your lunch, I hope, should be arriving shortly, then they probably will be out till 2:30, so don't send any notes in before 2:30. After that you may send any notes if you have any.

I guess that is all.

So you may now discuss the case.

(At this point the jury began its deliberations.

(Continued on next page.)

AFTERNOON SESSIONfk/ss
lpml

3:00 o'clock p.m.

THE COURT: I have received a note.

THE COURT CLERK: Note received Court Exhibit
1.THE COURT: I have received a note from the
jury. They want a copy of the indictments, both
indictments in this case.Ms. Seltzer and Mr. Preminger I want you to
look at this.

MR. PREMINGER: Okay.

THE COURT: I will send them in to the jury.

(A recess was taken until 3:40 o'clock p.m.)

THE COURT: I have a stack of notes. The
first is marked Court Exhibit 2: "Please give us a
copy of the Court's special instructions as to intent
of the scheme."That is on the intent question which I will
read to them.Then they say: "Please give us the transcript
of the postal agent's direct and cross-examination
testimony."We can read that to them if they want the
whole thing but I will try to cut it down for them.

Then they want a copy of Count Three. We have

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sent in Count Three to them.

MR. PREMINGER: That is Count One of the new indictment.

THE COURT: I will explain that to them.

They then ask: "Please give us a copy of Title 18, United States Code, Section 1341 and Section 2."

I will read it to them again.

Then there is something that does not look like a note but looks like a list of witnesses somebody made up and I will ask them whether they meant that to be a note. It looks rather to be notes than a note to me and is not signed by the foreman.

Then they say: "We would like the envelope containing the slips of paper with the addresses of Dr. Simon and Dr. Sylvan along with the order blanks to purchase tickets that were found in the bag."

MR. KRAMER: I am sorry.

THE COURT: The order blanks found in the bag, in the briefcase.

The testimony begins on page 34.

THE COURT CLERK: Jury notes marked Court Exhibits No. 2 to 6 inclusive.

THE COURT: And it goes to page 74, 34 through

MR. KRAMER: Your Honor, there were six envelopes introduced in evidence.

THE COURT: One had Dr. Simon and Dr. Sylvan.

MR. KRAMER: That is Exhibit 18. They all had order blanks. We have the envelopes which had their names in it but they all had order blanks.

THE COURT: The order blanks to purchase tickets that were found in the bag.

MR. KRAMER: I am saying all these envelopes were found in the bag and each one of them but only 18 is material relating directly to Simon and Sylvan.

THE COURT: And the others --

MR. KRAMER: Have information on other people.

THE COURT: Give them all those.

Bring in the jury.

(The jury took its place in the jury box.)

THE COURT: Mr. Foreman, I have here what is apparently a list of people.

JURY FOREMAN: I am sorry, that was something we were just discussing, it is not a note.

THE COURT: Exhibit 2 says "Please give us a copy of the Court's special instructions as to intent of the scheme." That I will read to you in

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a moment. I cannot give it to you, I will read it.

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The next request is, "Please give us the transcript of the postal agent direct and cross examination testimony."

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That is about forty pages of testimony, from page 34 to 74 which I will read to you or read a specific part if you want. Do you want the whole thing?

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JURY FOREMAN: Not the whole thing, the part that shows the intent, what the meaning of the intent means involving the postal department.

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THE COURT: Just a moment, I do not want you all talking at once. If necessary you can go back out and decide what portion of his testimony you want read and come back and tell me. Do not argue out here in the Courtroom.

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The next note says "Please give us a copy of Count Three. We received only Counts One and Two".

One indictment we sent you contained two counts and the second one contained one count and that is Count Three.

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The next note says, "Please give us a copy of Title 18, United States Code Section 1341 and Section 2." I will read those sections to you.

The next one says: "We would like the

5 1 envelope containing the slips of paper with the
2 addresses of Dr. Simon and Dr. Sylvan" and that is
3 Exhibit 18, which is this envelope here, which I
4 will give you.

5 And it says further "along with the order
6 blanks to purchase tickets that were found in the
7 bag." Those are the other envelopes which I will
8 send in to you.

9 Taking the special instructions as to the
10 intent or scheme:

11 Now as you will recall, there was a
12 considerable amount of testimony and several exhibits
13 which were admitted into evidence subject to a
14 special instruction to be given by the Court to you
15 at this time. That instruction is as follows:

16 The fact that the accused may have committed
17 similar acts at some time is not any evidence or proof
18 whatever that at another time the accused committed
19 the offenses charged in the indictments even though
20 the acts and the offenses charged are of a like
21 nature. Evidence as to an alleged similar act may
22 not therefore be considered by the jury in
23 determining whether the accused did the acts
24 charged in the indictments. Nor may such evidence
25 be considered for any other purpose whatever unless

6 1 the jury first find that other evidence in the
2 case standing alone establishes beyond a reasonable
3 doubt that the accused did the acts charged in the
4 indictments leaving aside only the question of
5 whether the accused did the same knowingly,
6 intentionally, willfully or as part of a plan or
7 preparation for a plan and not by way of mistake or
8 accident.

9 If the jury should find beyond a reasonable
10 doubt from the other evidence in the case that the
11 accused did the acts charged in the indictments then
12 the jury may consider evidence as to an alleged earlier
13 or later or simultaneous similar act in determining
14 whether there was a plan, scheme or design or a
15 state of mind, knowledge or intent with which the
16 accused did the acts charged in the indictments.
17 And where all the elements of the alleged earlier
18 or later or simultaneous similar act are established
19 by evidence which is clear and conclusive, the jury
20 may, but is not obliged to, draw the inference and
21 find that in doing the acts charged in the
22 indictments the accused acted pursuant to a plan,
23 scheme or design or acted willfully, knowingly and
24 with specific intent and not because of mistake or
25 accident or for innocent reason.

7 1 You must read the indictment as a whole. It
2 describes a scheme or plan in and of itself in all
3 three counts, Counts One, Two and Three, and it
4 describes certain acts that constitute part of that
5 scheme or plan and then in paragraph five of each
6 count it describes specifically mailings which the
7 government said constitutes the ultimate act which
8 brings it into this court.

9 You first have to look to determine whether
10 the government's proof proved the scheme or taken as
11 a whole and including the acts which are subject to
12 special instruction, whether they prove a scheme or
13 plan but leaving aside whether they may be similar
14 offenses or acts or anything of that nature. But
15 did they convince you beyond a reasonable doubt that
16 these two defendants entered into a scheme or a plan
17 as charged in the indictment and that these mailings
18 were part of and a fruition of that plan. Then you
19 may determine, if you so determine that these acts
20 quite independent of everything else have been so
21 proved. Then you may look at the other acts, for
22 example, the so-called Doubleday act, and determine
23 whether they have been established to your
24 satisfaction and if they have been you can take
25 them into account in determining whether you have

8 1 the acts done that are charged in the indictment;
2 whether they were done knowingly, intentionally,
3 willfully or as part of a plan or preparation for
4 a plan as a whole.

5 I do not know if that clarifies it for you
6 or not. You should read the indictment and
7 determine whether they have proved the acts charged
8 in the indictment, leaving aside the specific items
9 as to whether or not they constitute an offense or
10 not. Just disregard them as separate offenses of
11 any kind and then after that you can go to determine
12 use if you are so inclined, whether the acts charged
13 in the indictment were knowingly or willfully with
14 specific intent as part of a scheme or plan.

15 Section 1341 of Title 18, United States Code
16 reads as follows: "Whoever having devised or
17 intending to devise any scheme or artifice to
18 defraud, or for obtaining money or property by means
19 of false or fraudulent pretenses ... for the purpose
20 of executing such a scheme or artifice or attempting
21 to do so, places in any post office or authorized
22 depository for mail matter, any matter or thing
23 whatsoever to be sent or delivered by the postal
24 service ..."

25 Section 2 of Title 18 of United States Code

9 1 reads: "(A) Whoever commits an offense against the
2 United States or aids, abets, counsels, commands,
3 induces or procures its commission, is punishable
4 as a principal.

5 "(B) Whoever willfully causes an act to be
6 done which is indirectly performed by him or another
7 would be an offense against the United States, is
8 punishable as a principal."

9 Now returning to Exhibit 3, note asking for
10 the testimony of the postal inspector, will you let
11 me know what portion of the postal inspector's
12 testimony you want me to read and I will read it
13 to you.

14 (The jury left the Courtroom.)

15 (Continued next page.)
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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

JUN 11 1974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

M'FILMED

UNITED STATES OF AMERICA,

74-CR-322

-against-

DECISION AND ORDER

JAMES SEELEY CYPHERS and
JAMES W. FERRO,

June 11, 1974

Defendants.

TRAVIA, D. J.

The defendants James Seeley Cyphers and James W. Ferro move to dismiss the indictment pending against them.

The defendants have been indicted under the mail fraud statute, Title 18 U.S.C. § 1341. In United States v. Maze, _____ U.S. _____, 94 S.Ct. 645 (1974), the Supreme Court held that the mails must be sufficiently closely related to the defendant's scheme so as to bring his conduct within the statute. Applying this standard, the Supreme Court ruled that the mails were not sufficiently closely related to Maze's scheme for the mails only came into play as a result of the commercial practices of the defrauded merchants and banks. In contrast, it is alleged in the case at bar that the defendants themselves caused the allegedly fraudulently obtained airline tickets to be mailed to the doctors.

Consequently, there is a qualitative difference between the instant case and the Maze case inasmuch as here the defendants are alleged to have actually utilized the mails as part of their scheme to defraud. As a result of this qualitative difference, the Maze case does not require the dismissal of the indictment herein.

In addition, the defendant Cyphers, in his moving papers, states that there was no evidence before the Grand Jury which would indicate that airline tickets were actually mailed by the defendant or that the mailings were contemplated in the defendant's scheme to defraud. Absent these evidentiary prerequisites, the defendant contends that this court lacks jurisdiction for the Grand Jury could not have found that a federal crime had been committed. The general rule is that except in extraordinary circumstances, which are not present here, an indictment may not be attacked on the ground that it was not supported by adequate evidence. See, e.g., Costello v. United States, 350 U.S. 359 (1956). Nevertheless, the court has perused the Grand Jury minutes in this case and finds that the Grand Jury was warranted in returning indictment number 74-CR-322 against the defendants.

Accordingly, it is

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ORDERED that the defendants' motion to dismiss
indictment number 74-CR-322 be and the same is hereby denied.

Chas. Pharis

U.S.D.J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY



DEC 1 1974



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.

P.M.

M'FILED

UNITED STATES OF AMERICA

74 CR 322

-against-

Decision and Order

JAMES SEELEY CYPHERS and
JAMES W. FERRO,

December 18, 1974

Defendants.

PLATT, J.

Defendant FERRO moves to dismiss the indictment pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure and Rules 3 and 4 of the Second Circuit Rules governing prompt disposition of criminal cases on the ground that the government cannot be ready for trial within the requisite 6 month period when the initial pleading date, set by the government, is calendared for a day after the passage of 6 months from the date of arrest. Secondly, defendant argues that inasmuch as the first indictment was dismissed under the authority of United States v. Maze, 414 U.S. 395 (1974) on the grounds that the offense charged in the indictment did not constitute a "using of the mails" and was not re-indicted until April 23, 1974, some 13 months after arrest, the indictment must be dismissed as the government was not ready for trial within 6 months.

The defendant was arrested on March 19, 1973. An indictment was handed down on September 18, 1973 and the government issued a notice of readiness for trial on September 19, 1973. Thus both the indictment and notice of readiness occurred within six months of arrest. The defendant FERRO did not plead to the charge, however, until October 12, 1973 -- some 22 days after the six month period had expired.

Rule 4 of the Plan for the United States District Court for the Eastern District of New York for Achieving Prompt Disposition of Criminal Cases requires that:

"In all cases the government must be ready for trial within six months from the date of the arrest, service of summons, detention, or the filing of a complaint or of a formal charge upon which the defendant is to be tried (other than a sealed indictment), whichever is earliest."

The government cannot be "ready" for trial within the six months period prescribed by Rule 4 where the plea was not entered until after the close of that period and as such the indictment must be dismissed, United States v. Bowman, 493 F.2d 594 (2d Cir. 1974); United States v. Hilbert, 72 CR 142 (E.D.N.Y. - 1974, Dooling, J.), unless the time is tolled under one of the exceptions in Rule 5.

Rule 4 of the Plan for the Eastern District further provides:

"If it should appear that sufficient grounds existed for tolling any portion of the six-months period under one or more of the exceptions in Rule 5, the motion (for the dismissal of the indictment) shall be denied, whether or not the government has previously requested a continuance."

The government specifically relies on Rule 5(c)(ii) which excludes from the computation of the time within which the government should be ready for trial the period of time during which:

(ii) "the prosecuting attorney is actively preparing the government's case for trial and additional time is justified by exceptional circumstances of the case."

In the instant case, a lengthy investigation was undertaken during the period between arrest and indictment and continued up to and through the date of pleading (see affidavit of Postal Inspector, Robert T. McDowall). Such an investigation involved numerous out of state trips and interviews and substantial communications with various officials of the credit card industry. All of this was occasioned by the nature of the case; a complex and multifaceted credit card and mail fraud scheme involving literally hundreds of isolated transactions. The original indictment (73 CR 848) contains 43 separate counts.

At least one case has suggested that mail fraud schemes may justify a considerable time for preparation. (See Hanrahan v. United States, 348 F.2d 363, 367 (D.C. 1965).

The Statement of the Circuit Council to Accompany Second Circuit Rules Regarding Prompt Disposition of Criminal Cases (predecessor of the Eastern District Plan and which correspond almost exactly) noted:

"[I]n construing rule 5(c)(ii) the failure of the government to be ready for trial would not ordinarily be ground for extending the trial time limitations; but there are a considerable number of federal prosecutions, such as antitrust, fraud, conspiracy, and income tax cases, which, because of their nature and complexity, may require more than the prescribed period for pretrial proceedings and discovery. Rules 5(c)(ii) and 5(h), and indeed all the rules, are designed to permit the district courts to exercise a sound discretion in cases where special circumstances require an extension of time. (Emphasis added)."

The Court finds that in this case "exceptional circumstances" justify the government's delay between arrest and pleading and defendant's motion is therefore denied on this ground.

Defendant's second argument that, since he was not re-indicted until April 23, 1973, some 13 months after the initial arrest on the first indictment (73 CR 848), the indictment must be dismissed as the government was not ready for trial within 6 months, is also denied. Acceptance of such a contention would preclude any superseding indictment where more than six months had elapsed from the date of arrest. Drafters of the Plan certainly did not contemplate dismissal of an indictment where the delay was occasioned by the action of a court in holding a prior indictment insufficient.

Thom C. Bell

U.S.D.J.

THE COURT: I don't care to hear that.

I think I know enough about this case that it's not the usual run-of-the-mill type of case where things can be done with the snap of a finger. I can see from reading the indictment in this case that it is a complex matter. It is a fraud matter, and I think that under those circumstances our Court of Appeals has indicated that to be one of the type of cases where the Government is granted a little more than the usual X number of days where an indictment should be dismissed without any further facts; therefore the motion to dismiss is denied.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MISCELLANEOUS
CERTIFICATE
NO. 5253

FEE PAID \$4.00

THE PEOPLE OF THE STATE OF
NEW YORK

against

JAMES S. CYPHERS

Deft.

on Indictment

for

Forgery 2nd deg., Crim. Possession
Forged Instrument, 2nd deg., Crim.
Possession Stln. Prop. 2nd deg., Crim.
Possession Forged Instrument 2nd deg.,
Crim. Impersonation, and Petit Larceny

No.

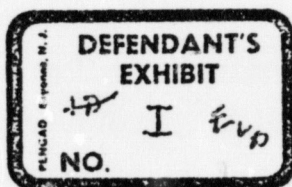
2662-73 (N323430)

Filed

May 25, 1973

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I, NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court, New York County, do
certify that it appears from an examination of the Records on file in this office, that on Jan. 22, 1975
upon the written recommendation filed by the District Attorneys Office
of New York County, the Indictment was ordered dismissed by the Hon.
Burton B. Roberts, a Justice of this Court, in Part 42.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this day of
Jan. 7, 1976

....., 19

Norman Goodman
County Clerk and Clerk of the Supreme Court,
New York County.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

-against-

INDICTMENT NO.

JAMES CYPHERS,

Defendant.

:
: 2662/73
:

-----X
RECOMMENDATION FOR DISMISSAL

INDICTMENT:

The Grand Jury of New York County indicted the defendant on May 17, 1973 for Forgery in the Second Degree, Criminal Possession of a Forged Instrument in the Second Degree, Petit Larceny and Criminal Impersonation. On June 11, 1973, the defendant pleaded not guilty.

GRAVAMEN:

The gravamen of the charge is that the defendant entered a store and made a purchase therein using an altered Mastercharge credit card and wrongfully representing himself as the owner thereof, signed the cardholder's name to the sales slip and received records valued at \$9 in exchange for the signed sales slip.

EVIDENCE:

On September 30, 1972, a customer entered the Doubleday Bookstore at 724 Fifth Avenue in Manhattan and produced a Mastercharge credit card bearing the name FRED PRESTON STAFF. He signed the name of FRED PRESTON STAFF to the sales slip and received from the clerk, SCOTT KALE,

merchandise (records) in exchange. The card was returned to the customer. In the course of processing the sales slip, it was ascertained by MARK STROUD of Mastercharge that the card had been altered because the number was incorrect. The incident was reported to JOHN DUSENCHEK of Interbank, an organization affiliated with Mastercharge. DUSENCHEK took the sales slip to the store, tracked down SCOTT KALE by his initials on the slip and asked him if he would recognize the customer who signed the slip. DUSENCHEK possessed eight photos, one of which was that of the defendant. KALE said he thought that the defendant had been the one who signed the slip.

KALE had seen the defendant in the store on previous occasions so he was somewhat familiar with him. KALE told ASSISTANT DISTRICT ATTORNEY HARVEY WEINBERG that he checked the card against a "hot" list and that it had not been reported stolen (this was because the number on the card had been altered). This conversation took place in early 1973. KALE testified at a preliminary hearing and in the Grand Jury about the transaction. He testified to seeing the defendant signing the slip and giving him (KALE) the card. FRED PRESTON STAFF, the cardowner, testified that the card had been stolen relatively recently and that the defendant had neither permission nor authority to use it. MARK STROUD, Vice President of Lewis State Bank, in Florida, issuer of the card,

testified that the card had been altered. DUSENCHEK testified that he had shown the pictures to KALE. Detective MICHAEL MARINO made the arrest.

The physical evidence in this case consists of the photos shown to KALE and the original carbon copy of the sales slip. KALE testified in the CRIMINAL COURT preliminary hearing on May 14, 1973 that he was informed three or four days after the incident (the sale) that he had accepted a stolen credit card. The facts indicate that that is not when he was told, but rather that he just heard of the fraudulent nature of the transaction when DUSENCHEK showed him the photos about 20 days later. MARK STROUD informed me that the alteration of the car was not discovered until at least five or six days after the transaction and that he had not contacted Doubleday at all. JOHN DUSENCHEK indicated that it would be nearly impossible for KALE in the regular course of business to have learned of the fraud at so early a time. If KALE was right about hearing about the stolen card so soon after the sale, his identification may well have been tainted by the suggestion that the person he was picking out was a credit card thief and the fact that he was already familiar with the defendant as a customer. If KALE is wrong about the date he learned of the transaction; it is a substantial inconsistency for trial purposes.

KALE came to the District Attorney's Office in December of 1974. His recollection of the incident is wrong in almost every detail. He could not remember the amount of

the transaction. He first thought he had phoned for approval (The interview with Weinberg indicated that he did not.) He stated he never used a "hot" list (The Weinberg interview indicated that he did). He had no independent recollection of the defendant as being the person who signed the slip.

He stated that there were many credit card customers that day and that there were many who, like CYPHERS, were "non-regulars." It should be noted that the defendant allegedly threatened KALE shortly after the arrest in that he "urged" him to drop the charges, but the defendant made no overt threats and no admissions. The defendant was arrested for threatening KALE on October 15, 1973, but that case is still pending and will probably be dismissed, according to WILES CUNNINGHAM, ASSISTANT UNITED STATES ATTORNEY for the Eastern District of New York.

The essential weakness of the case is this: KALE now has no clear independent recollection even after my attempts at reminding him of the sale itself, which occurred in late 1973. KALE never was shown to have a clear recollection of the incident and any clear means of linking this defendant with the fraudulent transaction. He can probably put him in the store that day and even have him making a credit card transaction, but there is no way to prove beyond a reasonable doubt, on the basis of KALE's prior recollection, that the defendant actually signed the slip. Even KALE was selecting

the defendant's photo from the others on October 20 1972 there was no way to be certain that he could differentiate the defendant from the other credit card customers who had been in the store that day, of which there were many, according to KALE.

A conversation with Mr. McDowell of the United States Postal Service resulted in his statement that the credit card sales slip had never been identified as being written by CYPHERS. I showed the document to JOSEPH McNALLY, a handwriting expert, together with exemplars of the defendant's handwriting and he told me no positive identification could be made. At one point it had been believed that a positive identification had been made.

DEFENDANT'S CRIMINAL RECORD:

The defendant has a long arrest record for similar charges, dating back to 1937. He has numerous convictions. He was recently (December 27, 1974) arrested in Las Vegas and also will be extradited to Cleveland for imposition of sentence for a similar charge.

RECOMMENDATION:

The People's case depends on the testimony of SCOTT KALE, a witness whose present recollection is totally inadequate for conviction and whose past testimony if subjected to any close scrutiny would be insufficient to prove any crime in this case beyond a reasonable doubt.

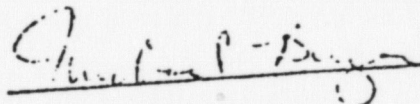
-6-

Accordingly, it is respectfully recommended that the charges against the defendant be dismissed. It is further requested that if this recommendation is approved by the Court, such approval be deemed an authorization to disclose the Grand Jury testimony to the extent set forth above.

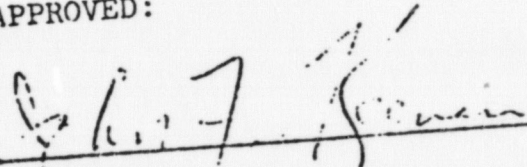
No previous recommendation in this case has been made to any Justice of this Court.

Dated: New York, New York
January 27, 1975.

Respectfully submitted,


MICHAEL BERGER
Assistant District Attorney

APPROVED:



JOHN F. KEENAN
Acting District Attorney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 42

----- X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

NOTICE OF MOTION

JAMES S. CYPHERS,

Indictment No. 2662/73

Defendant.

----- X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of MARVON PREMINGER, sworn to the *21st* day of June, 1974, and upon all of the prior pleadings and proceedings had herein, the undersigned will move this Court, at a Criminal Term, Part 42 thereof, at the Courthouse, 100 Centre Street, New York, New York, on the 25th day of June, 1974, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order:

1. Inspecting the Grand Jury minutes, and upon such inspection dismissing the indictment herein.
2. Granting to the defendant discovery and inspection of any and all credit cards or credit card receipts or invoices used in connection with the indictment herein.
3. Granting discovery and inspection of any handwriting reports, handwriting analysis or statements or confessions made by the defendant herein.
4. Directing the District Attorney to supply the defendant with a bill of particulars setting forth the names, addresses and credit card numbers imprinted upon any credit cards alleged to have been used by the defendant in connection with any of the counts of this indictment, and the names, addresses and credit card numbers imprinted upon any credit card sales slips or

SUPREME COURT : NEW YORK COUNTY
TRIAL TERM : PART 12

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

JAMES S. CYPHERS, :

Defendant. :

Indictment No. 2662/1973

-----X
BURTON B. ROBERTS, J.:

Defendant's omnibus motion is decided as follows:

Item 1, requesting an inspection of the Grand Jury minutes and, upon such inspection, dismissal of the indictment, is denied. The defense has failed to set forth any facts to rebut the presumption that the indictment is founded on legally competent and sufficient evidence (People v. Howell, 3 N Y 2d 672).

Items 2 and 4 are denied as evidentiary. However, the District Attorney is directed to set forth whether or not the third, fourth and fifth counts are based upon the same transaction as the first and second counts. If not, defendant will be permitted to move for further particulars as to the said third, fourth and fifth counts.

Item 3, requesting reports of handwriting analyses is granted. However, the District Attorney's answering papers state that there are no such reports in existence at the present time.

That part of item 3, requesting copies of statements or confessions made by the defendant is granted to the extent of CPL § 240.20 (1)(b).

The Clerk of the Court is directed to forward a copy of this order to the District Attorney and to the attorney for the defendant.

Dated: October // , 1974.

Burton B. Roberts

Counsel

No.

2662-73

N323430

PART 30 MAY 25 1973

THE PEOPLE OF THE STATE OF NEW YORK

Filed day of

.19

— against —

JAMES S. CYPHERS

Plends

Ball

2662

CRIMINAL POSSESSION OF A FORGED
INSTRUMENT IN THE SECOND DEGREE

CRIMINAL POSSESSION OF STOLEN
PROPERTY IN THE SECOND DEGREE

CRIMINAL IMPERSONATION

PETIT LARCE NY

INDICTMENT

FORGERY IN THE SECOND DEGREE

CRIMINAL POSSESSION OF A FORGED
INSTRUMENT IN THE SECOND DEGREE
170.10, 170.25, 165.45, 190.25,
155.25

FRANK S. HOGAN

District Attorney

A TRUE BILL

Foreman

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

INDICTMENT No. 2662-73

E vs.

Assigned by Justice

RETURN OF APPEARANCE

PART 30 JUN 6 1973

Richard F. Hyer
1934 3 Ave
one
ation

City Prison on B. W.

by Surety

PLEA

PART 30 JUN 11 1973 19

pleads not guilty
Present A. A. Little
OLIVER C. SUTTON Just
grapher B. Ben Simon

Fixed at

Consent of D.A.

grapher

Re-fixed

Consent of D.A.

grapher

ed 4-23-73

ty Pub Dr

Bail Refund Order

endant not appearing in Court—

and B.W.

ole revoked B.W.

9 JUL 1973

grapher

JACK ROSENBERG

JACK ROSENBERG

Justice

Part

Defendant pleads guilty before during trial of:

Acceptance of plea recommended by:

A. D. A.

Counsel present

Stenographer

Defendant's Residence

Age Sentence Date

PENDING SENTENCE—DEFENDANT:

Remanded

Committed to

Bail continued consent of D.A.

Paroled

TRIAL

Part

Justice

Asst. Dist. Atty.

Stenographer

Counsel Present

Tried and

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

HW:mw

THE PEOPLE OF THE STATE OF NEW YORK,

— against —

JAMES S. CYPHERS

Defendant

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuse the defendant of the crime of FORGERY IN THE SECOND DEGREE, committed as follows:

The defendant, in the County of New York, on or about September 30, 1973, with intent to defraud, deceive and injure another, falsely made, and completed a written instrument, of which the following is a copy, the same being and purporting to be and calculated to become and to represent if completed, a Credit Card Sales Slip.

DATE		TIME		CITY		STATE	
9/30/73		11:11		NEW YORK		NY	
AMOUNT	TAX	TOTAL		APPROVED			
10.00	0.00	10.00		[Signature]			
TOTAL		10.00		[Signature]			
TAX		0.00		[Signature]			
TOTAL		10.00		[Signature]			

The issuer of the card identified on this form is authorized to pay the amount shown on this TOTAL upon proper presentation. I promise to pay such TOTAL (together with any other charges due thereon) subject to and in accordance with the agreement governing the use of such card.

SALES SLIP

51399961221898 60 00000001068

R!

SECOND COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE, committed as follows;

Said defendant, in the County of New York, on or about September 30, 1972, knowing the same to be forged and with intent to defraud, deceived and injured another, uttered and possessed the forged instrument set forth in the first count of this indictment;

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of CRIMINAL POSSESSION OF A FORGED INSTRUMENT IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 30, 1972, knowing the same to be forged and with intent to defraud, deceived and injure another, uttered and possessed a forged instrument, to wit, a Credit Card.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE SECOND DEGREE, committed as follows:

Said defendant, in the County of New York, on or about September 30, 1972, possessed a credit card belonging to Fred Preston Staff;

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of CRIMINAL IMPERSONATION, committed as follows:

Said defendant, in the County of New York, on or about September 30, 1972, impersonated Fred Preston Staff, and did an act in such assumed character with intent to obtain a benefit and to injure and defraud another;

SIXTH COUNT

AND THE GRAND JURY AFORESAID, by this indictment, further accuse said defendant of the crime of PETIT LARCENY, committed as follows:

Said defendant, in the County of New York, on or about September 30, 1972, stole certain property from John S. Kale, to wit, personal property.

FRANK S. HOGAN

District Attorney

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

PART AP-1

-----X
THE PEOPLE OF THE STATE OF NEW YORK : DOCKET NUMBER:
N-323430

-against-

JAMES S. CYPHERS,

CHARGE:
170.10

Defendant. :

-----X
100 Centre Street
New York, New York
May 14, 1973

B e f o r e:

HONORABLE SHIRLEY LEVITTAN,
Judge.

A p p e a r a n c e s:

ALAN ALBERT, ESQ.,
ASSISTANT DISTRICT ATTORNEY,

For the People.

RICHARD HEIGER, ESQ.
1939 Third Avenue
New York, New York 10029,

For the Defendant.

Charles Strimpell,
Official Court Reporter.

I N D E XWITNESSES

<u>PEOPLE'S</u>	<u>EXAMINATION BY</u>	<u>PAGE</u>
Scott Kale	Mr. Albert	3
	Mr. Heiger	5
Fred Preston Staff	Mr. Albert	16
	Mr. Heiger	18

EXHIBITS

<u>DEFENDANT'S</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
A	Credit slip from Doubleday	12

THE COURT OFFICER: No. 32, Docket
#N-323430, James S. Cyphers, charged with
170.10.

THE COURT: Both sides ready?

MR. ALBERT: The People are ready.

MR. HEIGER: The defendant is ready.

THE COURT OFFICER: Please take the stand,
raise your right hand and face the Judge.

S C O T T K A L E, called as a wit-
ness on behalf of the People, was duly sworn
and testified as follows:

THE COURT OFFICER: Please state your
name, address and occupation.

THE WITNESS: Scott Kale, 724 Fifth Ave-
nue, New York. Occupation is assistant mana-
ger of Doubleday's Book Shop.

DIRECT EXAMINATION

BY MR. ALBERT:

Q I direct your attention to September 30th,
1972 at or about 6 p.m. at 724 Fifth Avenue.

Were you there at that time and place?

A I was.

Q What type of location is that?

A It's a book store and record store.

Q What is your capacity?

A Assistant manager.

Q Tell the Court what, if anything, happened at that time and place?

A Mr. Cyphers came in and made a purchase on a Master Charge of one or two record albums. The total amount of sale was \$10 and some odd change.

Q Do you see Mr. Cyphers in court now?

A Yes.

Q Point him out.

A The man in the blue shirt.

MR. ALBERT: Let the record indicate the witness is pointing out the defendant.

Continue.

A He gave me the card. He signed for the merchandise. I didn't have to call for proof because it was a small amount.

Q Did you see him sign it?

A Yes, he signed right in front of me. I held the card until I had the signature.

Q What name did he sign?

A Preston something or other.

Q You saw him sign that?

A Yes.

Q Did he give you a Master Card in that person's name?

A Yes.

Q Did you give him merchandise in exchange for that?

A His records, I did.

CROSS EXAMINATION

BY MR. HEIGER:

Q Am I correct in understanding that on September 30th, 1972 you met Mr. Cyphers and you had known him before that date?

A I had not known him. I only him in a business sense that he comes into the book shop.

Q Had he come into the record shop prior to September 30th, 1972?

MR. ALBERT: Objection, your Honor.

MR. HEIGER: A question of identity.

THE COURT: Subject.

THE WITNESS: Not that I am aware of.
I am only aware of seeing him several times.
After that each time he came into the store
after that I contacted other members of the
store and no matter what the charge was, even
if it were up to \$2 to call for proof.

THE COURT: Did you ever see him before
the date on which you say this occurred?

THE WITNESS: Not that I can swear to.
He may have been in, but I really couldn't
say. I had no reason to remember him.

Q You had no reason to remember him?

A No.

Q Did you ever call him at his home?

A I never have.

MR. ALBERT: Objection, your Honor.

Q Did you ever receive Mr. Cyphers' business
card prior to that date?)

MR. ALBERT: Objection, your Honor.

It is going into identification, your Honor.

MR. HEIGER: That's right, exactly.

MR. ALBERT: Which is not the purpose of

this hearing.

THE COURT: Yes. Not that, counsel. I am managing very nicely without help.

Q Did you ever receive one of these business cards from Mr. Cyphers?

A I did.

Q When was that?

A Friday, this past Friday.

Q Did you ever receive one September 30th, 1972?

A Not that I am aware of, no.

Q Did you ever have a conversation with Mr. Cyphers about your background?

A No, not that -- specifically? Specifically I had a conversation with him Friday night.

Q Prior to September 30th, 1972?

A Not that I am aware of.

Q Did you ever tell Mr. Cyphers that you attended Columbia University?

A I never have.

MR. ALBERT: I think it is too much detail.

MR. HEIGER: We are here on an identifi-

cation.

THE COURT: Counsel, this is just a felony hearing.

MR. HEIGER: That's right, and identification of the defendant.

THE COURT: Identification is perfect. So far he said no to everything.

MR. HEIGER: I want to get all the negatives from this complainant.

THE COURT: I will ask you to now move on.

Q Did you ever leave any messages on the tape machine in Mr. Cyphers home prior to September 30th, 1972 about records that he ordered in your store?

A Not that I am aware of.

Q Did you make the calls or didn't you?

A No, not that I know of.

Q Did you ever give Mr. Cyphers a credit at Doubleday's?

A He has a xerox copy. He must have it. He has a copy of a credit certificate with my signature on it.

Q Did you call him to come to the store that day?

A I did not.

Q He came to the store on his own?

A Apparently.

Q It wasn't for a specific order that he had made in the store?

A Prior to September I could have called him. I don't know. I have no reason for him to stick in my mind. I call hundreds of customers with records.

Q How many customers do you see in a day?

A Fifty, 75, it depends.

Q Every day of the week?

A Saturdays are busier.

Q How many buy records?

MR. ALBERT: Once again if we are going--

THE COURT: Sustained.

Q Are you being paid to appear today?

A No, I am not.

THE COURT: Sustained.

Q How did you come?

THE COURT: There isn't a jury.

Q How did you come to identify Mr. Cyphers as

the individual Preston prior to your appearing here today?

MR. ALBERT: Objection, your Honor.

THE COURT: Sustained.

Q Were you shown a photograph of Mr. Cyphers?

MR. ALBERT: Objection.

THE COURT: Sustained. I've permitted certain identification questions to connect the defendant with the act but a Huntley hearing is not before me.

Q On the day that Mr. Cyphers came into the store how much was the charge?

A \$10 and some change.

Q What was the date?

A September 30th.

Q Did Mr. Cyphers tell you he had a credit in your store that day?

A That I don't know.

Q Were you also known by an alias?

A My legal name is Joseph.

Q Joseph Kale?

A Correct.

Q I show you a document and ask you if that is

your signature?

A It is.

Q Tell us what document that is?

A This is a credit certificate.

MR. ALBERT: May I examine the certificate?

THE WITNESS: Credit certificate issued for book returns to the store. A person wouldn't want books. I would give them credit certificate. They will come back at a later date and take any merchandise they chose.

Q What date is on this?

A I didn't notice.

THE COURT: The document speaks for itself.

MR. HEIGER: Yes.

THE COURT: Show it to counsel.

MR. ALBERT: I have seen it.

Q Am I correct in stating, Mr. Kale, that if someone came into that store that day to make a \$10 purchase and had that document they wouldn't have to pay at all, would they?

A That's correct.

THE COURT: This being offered in evidence?

MR. HEIGHER: Yes, your Honor.

THE COURT: Any objection?

MR. ALBERT: No, your Honor.

THE COURT: Deemed marked as Defendant's Exhibit A.

Q When for the first time did you find out that Mr. Preston who gave you the card, that that was not Mr. Cyphers' name?

MR. ALBERT: Objection, your Honor.

It is not within the scope of this examination.

THE COURT: Overruled.

THE WITNESS: Three to four days after I had taken the charge I was called to the office and told that I had accepted a stolen card and with an altered number which I had no way of knowing.

Q How many Master Charge Cards had you accepted between the days of September 30th, 1972 and the day you

discovered that you accepted a stolen card?

A Perhaps 30 cards.

Q When you were advised in the office that you had accepted a stolen card had you recalled who had given it to you?

A Most of my customers are regulars. I had a pretty good idea.

Q Did you recall it was this defendant who had given you the card at the time when you discovered that the card you accepted was a stolen card?

A No, not until I saw the pictures.

MR. ALBERT: Before counsel continues I would point out that your Honor has already directed that this line of questioning be discontinued if we are going into identification.

THE COURT: All right, identification, counselor is relevant from the point of view of establishing the defendant's connection with the crime. I will not, however, allow you to pursue any matter regarding the means of identification and whether it was legally permissible under the various Huntley, etc. rules.

MR. ALBERT. The witness has identified this man in court today.

THE COURT: Correct.

Q Would you tell us how much time elapsed between the time you discovered the card you had taken was a stolen card and the time that pictures were shown?

MR. ALBERT: Again, objection.

THE COURT: Sustained.

Q And you at the time discovered that this was the defendant who gave you the card?

THE COURT: Sustained.

MR. HEIGER: He said he did not recall this defendant.

THE COURT: Counsel, you must ask the next question. I have sustained the objection.

Q When for the first time did you know that this was the defendant that gave you the card?

MR. ALBERT: Objection, your Honor.

THE COURT: I will let him answer just when.

THE WITNESS: October, early.

Q Of what year?

A Of '72.

Q At that time did you know that the defendant was James Cyphers?

A I did not know his name. I did not know his name. I only knew him from facial identification. I did not know any personal facts about him or his name.

Q Is it your testimony that this defendant came back into the store after September 30th?

MR. ALBERT: Objection, your Honor.
Irrelevant to the proceeding.

THE COURT: Overruled. You may answer yes or no.

THE WITNESS: Yes, he's a frequent customer.

Q Did he give you a credit card on those occasions?

MR. ALBERT: Objection, your Honor.

THE COURT: Sustained.

Q Were you offered a reward for testifying here?

MR. ALBERT: Objection.

THE COURT: Sustained, counsel.

MR. HEIGER: No further questions.

THE COURT: When young men do this I indulge them, but I don't have to indulge you, please.

MR. HEIGER: No further questions.

MR. ALBERT: No re-direct.

THE COURT: Call your next witness.

THE COURT OFFICER: Please take the stand, raise your right hand and face the Judge.

F R E D P R E S T O N S T A F F,
called as a witness on behalf of the People,
was duly sworn and testified as follows:

THE COURT OFFICER: Please state your name, address and occupation?

THE WITNESS: Fred Preston Staff, 1912
West Nielsen Circle, Tallahassee, Florida.

THE COURT: Also known as Fred Preston?

THE WITNESS: No.

DIRECT EXAMINATION

BY MR. ALBERT:

Q Mr. Staff, are you the owner of a Master
Charge credit card?

A Yes.

Q Did there come a time when you discovered that this credit card was no longer in your possession?

A Yes.

Q When was that?

A I don't know the exact date, but it was about a year ago in April I think.

THE COURT: Do you remember the month?

THE WITNESS: April, I believe.

THE COURT: Of '72 approximately.

THE WITNESS: Yes.

Q Did you discover that the card was missing from your possession?

A Yes.

Q Did you report that to anyone?

A Yes, I did. I reported it to --

Q You reported it to the Credit Card Company?

A Yes.

Q Did you report it to anybody else?

A Yes, the Police Department in New York City, the Chemical Bank in New York City and a little bank in Tallahassee.

Q Would you look at the defendant sitting here in the blue coat. Do you recognize him?

A No, I don't.

Q Had you ever seen him before?

A No, not to my knowledge.

Q Did you ever give him permission to take your credit card?

A No.

Q Permission or authority to use your name in any way?

A No, sir.

MR. ALBERT: I have no further questions.

CROSS EXAMINATION

BY MR. HEIGER:

Q You say your name is Fred Preston Staff?

A Yes.

Q Is that the name that was on the credit card?

A Yes, sir.

Q How many copies of that credit card do you have?

A Two.

Q Did you lose both?

A My wife has one.

Q Only one was lost or stolen?

A Yes, sir.

Q On either one of those cards was the name Fred Preston?

A Both of them, I believe.

Q Without the name Staff?

A No, no, no.

THE COURT: On both bore the name.

Q Fred Preston Staff?

A Yes, sir.

Q Did you ever make any purchases in Doubleday's Book Store in New York City?

A No, sir.

Q Have you ever been in New York before now?

A Yes, sir.

THE COURT: When you first noticed the card missing, sir, were you in New York?

THE WITNESS: I was in New York City.

Q Was your wife with you in New York?

A No, sir.

MR. HEIGER: I have no further questions.

MR. ALBERT: No re-direct examination.

THE COURT: Thank you very much.

MR. ALBERT: People's case.

MR. HEIGER: At this time, your Honor, the defendant moves to dismiss on the grounds that the People have failed to prove a crime in this case.

THE COURT: Come up gentlemen.

(Discussion at bench.)

MR. HEIGER: Bail continued, your Honor?

THE COURT: As to this matter it is held for the grand jury. After hearing held for the grand jury and bail is continued.

MR. HEIGER: As to the other matter?

THE COURT: We haven't called them in, yet.

THE COURT OFFICER: No. 23, James Cyphers charged with fugitive from Ohio.

THE COURT: You want an adjournment on this? This is a transfer to the Supreme Court. Mr. Cyphers, please listen to me. The continuation of bail on the other matter is continued on the condition that you stay away from all persons involved in this case other

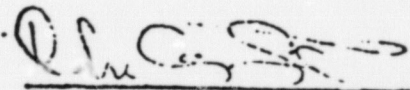
than your attorney. It has been reported to me that you spoke to Mr. Kale. I don't know whether you spoke to him or the bank people or not. What happened up to this time I am not interested in. It is now 12:37 of May 14th. I don't want you to have anything to do with these people in any way whatsoever except through your attorney. I don't want you to have any conversation with Mr. Kale. I don't want you to have any conversations with the bank people unless they are through your attorney or in the presence of your attorney and it is on that basis and that basis only that the bail is continued. Do you understand?
Case transferred to Part 30 forthwith.

*

*

*

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.



Charles Strimpell,
Official Court Reporter.

71915 DETROIT AVENUE - LAKEWOOD, OHIO 44107

PHONE: 226-2250

ESTIMATE OF REPAIRS

"Cadillac Quality Body Work"

NAME <i>J. Cyphers</i>		ADDRESS <i>3326 W. 100th</i>		DATE <i>9-30-72</i>	
MAKE OF CAR <i>Olds</i>	YEAR <i>72</i>	TYPE <i>98</i>	LICENSE NO.	MILEAGE	V-I NO. #
INSURED BY		ADJUSTER		PHONE:	BUSINESS

[illegible]

INSURED PAYS \$ _____ INSURANCE CO. PAYS \$ _____ R.O.No. _____

INSURANCE CHECK PAYABLE TO

The above is an estimate, based on our inspection, and does not cover additional parts or labor which may be required after the work has been opened up. Occasionally, after work has started, worn, broken or damaged parts are discovered, which are not evident on first inspection. Quotations on parts and labor are current and subject to change.

ESTIMATE MADE BY,

TOTAL ESTIMATE	80
----------------	----

NOTICE

Insurance Repair Work — Will Not be Released Without a Check or Draft,

Geoffrey's Jewelry, Inc.

2169 LEE ROAD

CLEVELAND HEIGHTS, OHIO 44118

Phone: 321-8240

MR. JAMES CYPHERS
3326 WEST 100TH ST.
CLEVELAND OHIO
44111

SEPT. 30TH 1972

ONE 18 GOLD WHITE GOLD (PIAGET) WATCH
WITH 18 GOLD WHITE GOLD BAND AND
40. DIAMONDS AROUND THE CRYSTAL.

\$ 3,700~~X~~

Albert Fier



STATEMENT
FOR ITEM PAID DUE
THE AMY COMPANY

10321 Jasper Avenue
Cleveland, Ohio, 44111
251-4767



Mr. James Cyphers
3346 - N 100 St
Cleveland Ohio 44111

DATE 9-30-72

AMOUNT

\$ 6.00

Six (6) Shirts

Paid
9.30.72

R.C.
The Amy Co

CHARGE ACCOUNTS GRANTED ARE A CONVENIENCE TO EXPEDITE DELIVERIES.
PLEASE REMIT IN THE NEXT MAIL.

FORM 2: A monthly service charge of 1% (12% per Annum) will be added to amount shown as "past due" if payment is not received within 30 days, according to terms of sale printed on invoice.

No. <u>Sept 30 1972</u>	Received of <u>James Cyphers</u>	For advance for <u>6 Shirts</u> Dollars <u>6.00</u>	1972
-------------------------	----------------------------------	---	------

THE BLUE FOX
11706 CLIFTON BOULEVARD
CLEVELAND, OHIO 44107

ACCOUNT NAME James Cyphers ACCOUNT NO. _____
ADDRESS 1700 Madison Ave.
CITY Miami Beach STATE _____
CUSTOMER'S SIGNATURE J. Cyphers

DATE 9-30-72

RECORD OF CHARGE	FOOD AND DRINK	TAX	TIP	TOTAL
	83.20	3.71	16.61	103.60

No. XIV September 30, 1972

RECEIVED OF James Cyphers DOLLARS

500 Dollars and no/100

Medi-Comp, Inc.
10605 CHESTER AVENUE
CLEVELAND, OHIO 44106

\$ 54.00 Dawn Schaefer

CASCADE P LI-C253 PRINTED IN U.S.A.

Physician <u>Dr. Schaefer</u> <u>1700 Madison Ave.</u> <u>Miami Beach, Florida</u>		Patient: <u>James Cyphers</u>		PHYSICIAN COPY	
[] M [] F Age: _____ Height: _____ Weight: _____		[] Bill Dr. [] Bill Pt. (Have patient fill in patient billing form)			
MEDI-COMP, INC. LABORATORY No. <u>1-1830000</u>					
[] Acid phosphatase	0.5-8.0mU/ml	[] Creatinine	0.2-1.2mg%	[] Potassium	3.6-5.0mEq/l
[] A/G ratio	1.0-2.0	[] Glucosyl	2.0-3.5mg%	[] Protein, serum	6.0-8.0gm%
[] Albumin	3.5-5.0gm%	[] Glucose, blood	60-120mg%	[] S.G.O.T.	7-40mU/ml
[] Aldolase	3.0-6.0mU/ml	[] Iron, serum	60-170mcg%	[] S.G.P.T.	3.0-20mU/ml
[] Alkaline phos	30-85mU/ml	[] Iron, bind cap	200-410mcg%	[] Sodium, serum	135-145mEq/l
[] Amylase	50-100 A.U.	[] Iron, % satur'n	10-50%	[] T-3 (male)	45-65% satur'n
[] Bilirubin	0.2-1.3mg%	[] Lithium	0 (mEq/l)	(female)	41-65% satur'n
[] B.U.N.	10-20mg%	[] LDM	100-225mU/ml	[] T-4	5.4-12.2mcg%
[] Calcium, serum	9.0-11.0mg%	[] Lipase (O37C)	0.5-1.0mU/ml	[] Triglycerides	55-135mg%
[] Cephalin flocc	0-1+	[] Lipids, total	400-600mg%	[] Uric Acid	2.5-8.0mg%
[] Chloride	95-105mEq/l	[] P.D.L.	3.5-4.0mg%	[] V.D.R.L.	Nonreactive
[] Cholesterol	150-250mg%	[] Phosphorus	2.5-4.0mg%	[] V.D.R.L. (Premarital Forms)	
[] CPK	5.0-50mU/ml	[] Phospholipids	100-300mg%	For other tests, use miscellaneous card	

MEDI-COMP, INC.
Copyright 1972, MCI

10605 Chester Avenue, Cleveland, Ohio 44103 216/721-5700
Interstate Laboratory License 34-1023 Medicare Laboratory 36-8135

Dawn Schaefer
9-30-72

McVEY'S WATCH SHOP
22 THE ARCADE
CLEVELAND 14, OHIO

Date Sept 30 1972

Mr. James Cyphers

No. _____

Reg. No. _____ Clerk _____ ACCOUNT FORWARDED

1	Watch Repair	17.00
2	Complete Overhaul	
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

3264-11

Your account stated to date. If error is found return at once.

UNITED PASSPORT STUDIOS

1 HOUR SERVICE
132 THE ARCADE
781-1133

DATE Sept 30 1972

Mr. James Cyphers

2 P.P.	5.23
PAID	

Cyphers

38

Sept 30 7

PAID

2:15

1-30

621-7608

McVEY'S
WATCH SHOP

"YOUR TIME IS OUR BUSINESS"
48 HOUR REPAIR SERVICE

22 THE ARCADE
SUPERIOR LEVEL

CLEVELAND, OHIO



QUALITY PHOTOGRAPHS

for

PASSPORT

DENIS STUDIO — 132 THE ARCADE
(Enter from Euclid or Superior)
781-1133

ONE HOUR SERVICE

P 728 DEPARTMENT OF SURGERY
ROBIN ANDERSON, M.D.
GEORGE CHILE, M.D.
CALDWELL B. ESSELSTYN, JR., M.D.
SHATTUCK W. HARTWELL, JR., M.D.

ROBERT E. HERMANN, M.D.
STANLEY G. HOERR, M.D.
RUPERT B. TURNBULL, M.D.
FRANK L. WEANLEY, M.D.

DATE

SEP 30-72

PRESCRIPTION NO.

(MR.) (MRS.) (MISS)

JAMES CYHERS

HIST. NO. 1-235-645

STREET

3326 WEST 100TH CITY CLEVELAND

STATE OHIO

GM OR CC

CLEVELAND CLINIC
EUCLID AVENUE AT EAST 93RD STREET
CLEVELAND, OHIO 44106
229-2200

R

Lydia O'Leary Covermark
waterproof Highers

Elizabeth Aiden Scar Cream

LABEL ☐

ORIGINAL TO PATIENT ☒

REFILL ☒ X'S

NON-REFILL ☐

NO.

99
Higbee's Higbee's

4

EXHIBIT 10
JAN 1970

2.2.2.5.5

NY 5711 CHARGE

06-28-97



NO. 23

NO. 2
CUSTOMER'S SIGNATURE

James Cypch

8173-3AC

JAK:S CYPHERS

• 68 •

3401 WEST 105E

CETRON	OCTRON	CETRON
GVO	DURON	PREMEX

0110

1111

VERIFICATION NUMBER

4

TOTAL MUST AGREE WITH
PRINTED AMOUNT ABOVE

Thanks, come back again — soon

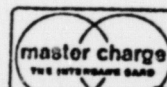
4447 120 220 420

8/73-BAC

IMPORTANT: *PH 55*
RETAIN THIS COPY FOR YOUR RECORDS. YOUR MONTHLY STATEMENT IS ITEMIZED. THEREFORE THERE WILL BE NO COPY OF THIS CHECK INCLUDED WITH YOUR BILLING.

00148173 093072

THE PRICE
IS A LOT
E.C. ON 4412



THE PRICE IS RIGHT
2144 NOBLE ROAD 861-1222
EAST CLEVELAND, OHIO

0004180

5911243

QUAN	DESCRIPTION	UNIT COST	AMOUNT
1	JACKET	40.00	
	T-	1.88	
IDENTIFICATION			
DATE 9.30.72		DEPT	
EMPLOYEE	TYPE SALE	AUTH CODE	
		TAX	
The above transaction is confirmed and I authorize the issuer of my Master Charge Card to pay the Total shown hereon. I promise to pay said Total and related charges pursuant to the card's card agreement with issuer.		TOTAL	41.88

The above transaction is confirmed and I authorize the issuer of my Master Charge Card to pay the total shown herein. I promise to pay said total and related charges pursuant to my charge card agreement with issuer.

CUSTOMER SIGNATURE x James Cypser

THE PRICE IS RIGHT
2144 NOBLE ROAD 851-1222
EAST CLEVELAND, OHIO

PURCHASER'S NAME: 4447 120 220 420
 MEMBER: JAMES CYPHERS
 8/73•BAC
 1169334
 BLUE FOX REST
 AX 3341005932
 BAC 1024751025
 9 30 72

DATE: 9/30/72
 SALES NO.:
 AUTHORIZATION CODE: BAR

	SERVICE OR PURCHASE
	TAX
	TIPS AND MISC.
5 75	TOTAL

PURCHASER BY SIGNING THIS DRAFT AUTHORIZES ISSUANCE OF PURCHASER'S BANKAMERICARD ACCOUNT SHOWN ABOVE TO PAY THE TOTAL HEREON UPON PRESENTATION AND CHARGE SAID ACCOUNT, AND PROMISES TO PAY SAID AMOUNT TO ISSUER IN ACCORDANCE WITH THE PURCHASER'S AGREEMENT CONCERNING THE USE OF THE BANKAMERICARD. UNIT COSTS INCLUDES ALL MOTOR VEHICLE FUEL TAXES WHERE APPLICABLE.

SALE CONFIRMED: J Cyphers
 PURCHASER SIGN HERE
 POSSESSION OF THIS INSTRUMENT CREATES NO PRESUMPTION OF PAYMENT

PURCHASER'S NAME: 4447 120 220 420
 MEMBER: JAMES CYPHERS
 8/73•BAC
 1169334
 BLUE FOX REST
 AX 3341005932
 BAC 1024751025
 9 30 72

DATE: 9/30/72
 SALES NO.:
 AUTHORIZATION CODE: BAR

	SERVICE OR PURCHASE
	TAX
	TIPS AND MISC.
6 50	TOTAL

PURCHASER BY SIGNING THIS DRAFT AUTHORIZES ISSUANCE OF PURCHASER'S BANKAMERICARD ACCOUNT SHOWN ABOVE TO PAY THE TOTAL HEREON UPON PRESENTATION AND CHARGE SAID ACCOUNT, AND PROMISES TO PAY SAID AMOUNT TO ISSUER IN ACCORDANCE WITH THE PURCHASER'S AGREEMENT CONCERNING THE USE OF THE BANKAMERICARD. UNIT COSTS INCLUDES ALL MOTOR VEHICLE FUEL TAXES WHERE APPLICABLE.

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PURCHASER'S NAME: 4447 120 220 420
 MEMBER: JAMES CYPHERS
 8/73•BAC
 1169334
 BLUE FOX REST
 AX 3341005932
 BAC 1024751025
 9 30 72

DATE: 9/30/72
 SALES NO.:
 AUTHORIZATION CODE: BAR

	SERVICE OR PURCHASE
	TAX
	TIPS AND MISC.
9 35	TOTAL

PURCHASER BY SIGNING THIS DRAFT AUTHORIZES ISSUANCE OF PURCHASER'S BANKAMERICARD ACCOUNT SHOWN ABOVE TO PAY THE TOTAL HEREON UPON PRESENTATION AND CHARGE SAID ACCOUNT, AND PROMISES TO PAY SAID AMOUNT TO ISSUER IN ACCORDANCE WITH THE PURCHASER'S AGREEMENT CONCERNING THE USE OF THE BANKAMERICARD. UNIT COSTS INCLUDES ALL MOTOR VEHICLE FUEL TAXES WHERE APPLICABLE.

SALE CONFIRMED: J Cyphers
 PURCHASER SIGN HERE
 POSSESSION OF THIS INSTRUMENT CREATES NO PRESUMPTION OF PAYMENT

PURCHASER'S NAME: 4447 120 220 420
 MEMBER: JAMES CYPHERS
 8/73•BAC
 1169334
 BLUE FOX REST
 AX 3341005932
 BAC 1024751025
 9 30 72

DATE: 9/30/72
 SALES NO.:
 AUTHORIZATION CODE: BAR

	SERVICE OR PURCHASE
	TAX
	TIPS AND MISC.
8 00	TOTAL

PURCHASER BY SIGNING THIS DRAFT AUTHORIZES ISSUANCE OF PURCHASER'S BANKAMERICARD ACCOUNT SHOWN ABOVE TO PAY THE TOTAL HEREON UPON PRESENTATION AND CHARGE SAID ACCOUNT, AND PROMISES TO PAY SAID AMOUNT TO ISSUER IN ACCORDANCE WITH THE PURCHASER'S AGREEMENT CONCERNING THE USE OF THE BANKAMERICARD. UNIT COSTS INCLUDES ALL MOTOR VEHICLE FUEL TAXES WHERE APPLICABLE.

SALE CONFIRMED: James Cyphers
 PURCHASER SIGN HERE
 POSSESSION OF THIS INSTRUMENT CREATES NO PRESUMPTION OF PAYMENT



UNIFORM DONOR CARD

OF JAMES CYPHERS

Print or type name of donor

In the hope that I may help others, I hereby make this anatomical gift, if medically acceptable, to take effect upon my death. The words and marks below indicate my desires.

I give: (a) ☒ any needed organs or parts

(b) ☐ only the following organs or parts

ALL OR ANYTHING NEEDED

Specify the organ(s) or part(s)

for the purposes of transplantation, therapy, medical research or education;

(c) ☒ my body for anatomical study if needed.

Limitations or special wishes, if any: **COMPLETE BODY**

Signed by the donor and the following two witnesses in the presence of each other:

James Cyphers MAR 03 1918
Signature of Donor Date of Birth of Donor

SEP 30 1972 CLEVELAND, OHIO
Date Signed City and State

Maria Ferro Paul Ferro
Witness Witness

CODE, the Committee on Donor Enlistment, is sponsored by the Kidney Foundation of Ohio, Inc.



This is a legal document under the Uniform Anatomical Gift Act or similar laws.

The Price Is Right II

2202 NOBLE ROAD
CLEVELAND, OHIO 44112
PHONE: 851-1222

CUSTOMER'S ORDER NO.		DATE <u>9-30</u> 1972	
NAME <u>JAMES CYPHERS</u>			
ADDRESS <u>3326 EIGHTH CLEVELAND</u>			
SOLD BY	CASH <input checked="" type="checkbox"/>	C.O.D. <input type="checkbox"/>	CHARGE <input type="checkbox"/>
QUAN.	DESCRIPTION	PRICE	AMOUNT
1	BLACK SUIT		90.00
1	GRAY SUIT		85.00
		TAX	7.88
		TOTAL	182.88

ALL CLAIMS AND RETURNED GOODS MUST BE ACCOMPANIED BY THIS BILL

RECEIVED BY

ECONOMY PRINTING CO. CLEVELAND OHIO

James Cyphers

CUSTOMER'S NO.

4441 120 220 420

8773-BAC

JAMES CYPHERS

3481 WEST 105 ST
CLEVELAND OHIO

10 2 72

NO. C 284222

CUSTOMER'S SIGNATURE

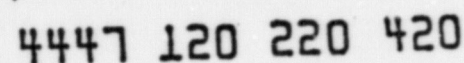
James Cyphers

LICENSE NO.	DESCRIPTION	QTY	PRICE	AMOUNT
	OCTRON CETRON			
STATE	QVO DURCN PREMEX			
<u>OHIO</u>				
CUST. CAR OR ORDER NO.				
DELIVERED BY	VERIFICATION NUMBER		TOT. <u>9.00</u>	

TOTAL MUST AGREE WITH UNPRINTED AMOUNT AT TOP

Thanks, COME BACK AGAIN — SOON





Thank you JAMES CYPHERS 8/73 • BAC
NAME JOSEPH ST 16 West 130 120
M A VANDERBILT

JOSEPH S. R. 10 Weston 720
MA ADDRESS OF
32 OSR 85111
City of Detroit Mich 48225



**SAFE-T-GUARD SERVICE - - - BEST
PROTECTION FOR YOUR CAR**

YEAR & MAKE OF CAR	DATE
12 Olds	Sept 30
LICENSE	MILEAGE

PULPING MOTOR & CHARGING CIRCUIT OK Very light load test Very and cables Pulping Motor Generator Voltage regulator	<input type="checkbox"/> ENGINE MECHANICAL CONDITION CHECK Compression Check <input type="checkbox"/> DISTRIBUTOR & IGNITION CIRCUIT CHECK Contact points Condenser	Cap and Rotor Clean and Lube Coil primary voltage Cam dwell Primary & secondary wiring Spark plugs Timing	<input type="checkbox"/> FUEL & INDUCTION SYSTEM CHECK Heat riser valve Fuel pump Fuel filter Sediment bowl Service carburetor Air cleaner PCV Adjust Idle
---	--	--	---

REGULAR ☐ POOR ☐ ROUGH ☐ HI-SPEED ☐ KNOCK OR ☐ STALLS

FBA	PARTS	LABOR	Quan.	Amount
-----	-------	-------	-------	--------

EXACO AUTHORIZED MOTOR TUNE-UP SERVICE				
ROAD SERVICE				
Tire Change and Repair				
Checked up AT 430 PM				
Left AT 600 PM				

BOR <input checked="" type="checkbox"/> <u>1 1/2</u> Hrs. @ \$	<input type="checkbox"/> Flat rate	<u>✓</u> <u>20.00</u>
--	------------------------------------	-----------------------

Series			
Attention		TOTAL FWD.	
Ameris Cyprling			

TEXACO SAFE-T-GUARD INSPECTION						WORK DONE BY	CHECKED BY
	OK	NEEDED		OK	NEEDED		
T & CABLES			WIPERS			PC	PC
R CAP			LIGHTS				
TR. HOSE			WHEEL ALIGNMENT				
T			SHOCK ADJUSTERS				
& FLUID			MUFFLER & TAIL PIPE				

No. G 521705

SAFE-T-GUARD SERVICE ORDER

		CHECKED	RECD
<input type="checkbox"/>	GASOLINE	<input type="checkbox"/>	Sky Chief
<input type="checkbox"/>	Fire Chief		
<input type="checkbox"/>	MARFAK CHASSIS LUBRICATION		
<input type="checkbox"/>	MOTOR OIL	Havoline	Texaco
<input type="checkbox"/>	TRANSMISSION		
<input type="checkbox"/>	DIFFERENTIAL		
<input type="checkbox"/>	WHEEL BEARINGS		
<input type="checkbox"/>	OIL FILTER		
<input type="checkbox"/>	AIR FILTER		
<input type="checkbox"/>	FUEL FILTER		
<input type="checkbox"/>	PCV SYSTEM		
<input type="checkbox"/>	POWER STEERING		
<input type="checkbox"/>	UNIVERSAL JOINTS		
<input type="checkbox"/>	COOLING SYSTEM	<input type="checkbox"/>	TEXACO ANTI-FREEZE COOLANT
		<input type="checkbox"/>	FLUSH
<input type="checkbox"/>	AIR CONDITIONER		
<input checked="" type="checkbox"/>	TIRE SERVICE		

TOTAL FWD TUNE-UP • TBA • PARTS

CUSTOMER'S SIGNATURE	PHONE	TIME WANTED	TOTAL ABOVE		
James G. Phelan		6 32 PM	TAX		
IMPORTANT: Use ball point pen and press down firmly.			TOTAL		
WILL CALL ME		DELIVER			

No. _____

Sept 30 1972

Received of JAMES Cypher

For advance for Las Vegas Papers ¹⁰⁰ Dollars

\$500

[Signature]

Eriview News

1930 E. 6th ST

CLEVELAND, OHIO 44111



SECOND FLOOR, FIDELITY BUILDING, CLEVELAND, OHIO 44114
TELEPHONE, 621-9355-56

Corporation & Office Supply Co.
"Corporation and Office Supplies — Attorney's Specialties"

Invoice No. **144743**

Date **SEPT. 30, 1972**

Your Order No.

Our Order No. **B 27025**

Shipped to

Sold to
**C.T.V. CORPORATION
JAMES CYPHERS
303 EAST 57TH ST.
NEW YORK, NEW YORK 10022**

James Cyphers

Salesman	Terms	Filled by	Date Shipped	Shipped Via
HL	NET			PICKED UP

QUANTITY	DESCRIPTION	PRICE	AMOUNT
2	CORPORATION SEAL	9.45	18.90
		ST	.86
		TRANSP.	1.25
			21.01

*Raise in Cost
H. Larson*

YOUR CHECK IS YOUR RECEIPT

IF RECEIPTED BILL IS REQUIRED, PLEASE ENCLOSE SELF ADDRESSED STAMPED ENVELOPE
KINDLY NOTE INVOICE NUMBERS ON SAME TO INSURE PROPER POSTING.

Exhibit A
Exhibit A of the State of New York

State of New York
County of Kings

I, Scott J. Lee, do hereby swear and depose and state that I am 26 years of age having been born on Aug 1, 1947. I reside at 213 W. 2nd St. N.Y. N.Y. and am employed by Helena Rubinstein and work at various stores in the New York area. On about Sept. 30, 1977 I was employed as an assistant manager at Holiday Book Shop at 724 5th Ave, N.Y. I had occasion to sell several records to an individual later identifying to me as James Cypher. I specifically recall these transactions with Mr. Cypher because he suggested to me in a conversation about music, suddenly I became very busy with other customers and only partly aware of his purchases on a MasterCard. When I was so busy I neglected to call MasterCard for authorization. It was only later when I did call that I found out that this was a stolen card. But by this time Mr. Cypher had left the premises and had the charge card and the merchandise. Mr. Cypher presented a MasterCard credit card issued to Mrs. Paul Victor Stiff, in payment of the above described purchase.

I have initialed and dated a copy of the above
described purchase invoice as acknowledgment of
my having recognized it in connection with the
purchase made by Mrs. Cyphus Mc. John Field,
Interbank Card System and Mc. John Edwards,
County Jail, First Nat. City Bank. I showed me
the above described credit and purchase invoice
in addition to a group of photos from which I
selected an individual, later identified to
me as James Cyphus, as the individual who
made the above described purchase. On or about

Mrs. Cyphus followed me after work
into a Credit Union and ~~showed~~ me by sitting
to me that he could obtain an airman's ticket
out of the country at a nominal fee to me. I
refused to discuss anything further and said
nothing further I had to say would be said in
Court. His proposition was made so clear to me
that there was no way to misinterpret his hints.
I brought this attempted bribe to the attention of
Detective Marino and Detective Marino referred it
to the Judge at Manhattan Criminal Court the Judge
admonished I don't recall his name approached Mr.
Cyphus and warned him against contacting, threatening
or harassing me. On Tuesday Oct 9, 1973 Mrs.
Cyphus & Michael traveled to Birmingham

Copy. This of course, is

When I am presently assigned, confronted me with a Xerox Copy of the above mentioned Master Charge receipt and proceeded to state that "I might be sorry that he had located me". He then proceeded to stand across the aisle from me for several minutes until I was forced to have store security remove him from the premises. His ~~at~~ tone of voice, and manner towards me were so threatening, that I was unable to work well or sleep. I was finally forced to see my doctor and receive medication to calm me. I have learned of various federal and state criminal charges pending against Mr. Cyphus and I am extremely afraid of what he might do to me.

Watt Kile

From a statement
before me this 15th day
of October 1973 at
Brooklyn, NY.

G. J. McFowle
Coral Transporter

H. Langston
Coral Transporter

CERTIFICATE OF SERVICE

September 3, 1976

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York ~~and to the Council for the~~
~~and to the Council for the~~

Jonathan Hilberman

Copy Received 9/3/76
Mudge, Rose, Guthrie &
Alexander